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COMMISSIONERS

TITLES 1-6

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2014 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
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United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2011	April 7, 2011
2012	March 29, 2012
2013	April, 4, 2013
2014	March 20, 2014

TITLE 1

COURTS AND COURT OFFICIALS

CHAPTER 2

SUPREME COURT

1-201. Constitution of court. — The supreme court consists of five (5) justices, a majority of whom shall be necessary to make a quorum or pronounce a decision. The justices of the supreme court shall be elected by the electors of the state at large. The terms of office of said justices shall be six (6) years. The chief justice shall receive an annual salary in an amount of two thousand dollars ($2,000) greater than the annual salary of the justices of the supreme court to compensate for the additional constitutional and statutory duties of the office.

History.
R.C., § 3814; reen. C.L., § 3814; C.S., § 6442; am. 1921, ch. 29, § 1, p. 37; I.C.A., § 1-201; am. 1985, ch. 29, § 1, p. 52; am. 2014, ch. 291, § 1, p. 734.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 291, substituted "two thousand dollars ($2,000)" for "one thousand five hundred dollars ($1,500)" in the last sentence in the section.

1-203. Original jurisdiction.

JUDICIAL DECISIONS

Cited in: Leavitt v. Craven, 154 Idaho 661, 302 P.3d 1 (2012).

CHAPTER 5

SUPREME COURT REPORTER

1-505. Distribution of reports. — The reporter shall have no pecuniary interest in the reports. The decisions of the said supreme court shall be prepared for publication, by the reporter, as rapidly as possible, and as soon as a sufficient number of decisions are prepared to fill a volume, such a volume shall be printed, and as many copies thereof as directed by the administrative director of the courts, shall be delivered to the state law librarian, who shall distribute them as follows: to the librarian of congress, three (3) copies; to the Idaho state law library, five (5) copies; to the university of Idaho, general library, two (2) copies; to the Idaho state university library, one (1) copy; to Boise state university library, one (1) copy; to the college of law of the university of Idaho, twelve (12) copies; to the Lewis-Clark state college, one (1) copy; to the library at the state penitentiary, one (1) copy; to each county prosecuting attorney, one (1) copy; to each magistrate, one (1) copy; to each district judge, one (1) copy; to each justice of the supreme court, one (1) copy; to the clerk of the supreme court, one (1) copy; to the attorney general, five (5) copies; one (1) copy to the department of lands of Idaho; one (1) copy to the public utilities commission of Idaho; one (1) copy to the industrial commission; one (1) copy to the division of public works; one (1) copy to the department of insurance; one (1) copy to the judiciary committee of the senate during sessions of the legislature; one (1) copy to the judiciary committee of the house of representatives during sessions of the legislature; to each state and territory in the United States sending to this state copies of its printed court reports, one (1) copy for the use of the state library or law library thereof; to each foreign state or country, sending to this state copies of its printed court reports, one (1) copy; to the governor, secretary of state, state treasurer, state controller, superintendent of public instruction, each one (1) copy; and to other officers and institutions as directed by the administrative director of the courts; provided, that each public officer receiving a copy of any volume or volumes of said reports under the provisions of this section, shall take good care of the same, and shall upon retiring from office, turn the same over to his successor in office, provided further, that copies of any volume of such reports may be again issued to any of said officers, institutions, states or territories upon good and sufficient proof of loss of the copies sought to be replaced, presented to the administrative director of the courts, who may direct the librarian to furnish another copy of the volume so lost, in place thereof. Any of the said officers, institutions, states or territories may inform the administrative director that they do not wish to receive these volumes or wish to receive a lesser number of volumes than specified in this section. The state law librarian shall then cease distributing volumes to those recipients who no longer wish to receive them, and shall distribute the number of volumes requested to those recipients who wish to receive a lesser number of volumes than specified in this section. Recipients may also inform the administrative director that they wish to resume receiving the volumes, or wish to resume receiving the full number of volumes specified in this section, and the state law librarian shall then distribute to those recipients the volumes published thereafter in the number specified in this section.

History.
1903, p. 367, § 5; am. R.C., § 226; compiled & reen. C.L., § 226; C.S., § 203; am. 1925, ch. 7, § 1, p. 9; I.C.A., § 1-505; am. 1935, ch. 43, § 2, p. 79; am. 1939, ch. 28, § 1, p. 58; am. 1959, ch. 73, § 1, p. 165; am. 1969, ch. 122, § 1, p. 382; am. 1978, ch. 152, § 1, p. 334; am. 1994, ch. 180, § 2, p. 420; am. 2011, ch. 34, § 1, p. 77.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 34, added the last three sentences in the section.

CHAPTER 6

OTHER COURT OFFICERS — COORDINATOR OF COURTS

SECTION.

1-612. Duties of administrative director. — The administrative director, acting under the supervision and direction of the supreme court, shall:

(a) Procure data from time to time and as of the close of each fiscal year with respect to these matters: the business transacted by the various courts of Idaho; the state of their dockets; the needs, if any, for assistance to expedite the handling of judicial business pending in the courts; and such other matters as, in the judgment of the supreme court, bear on the work and the administration of the judicial system of the state.

(b) Report to the supreme court from time to time concerning the need for assistance in the handling of pending business in any court of Idaho, and recommended means for meeting the need.

(c) Report to the supreme court and the governor for each fiscal year, as of the close of the year, concerning the data procured as provided in subsection (a) of this section and as to the work of the administrative director's office, one (1) copy of each report to be made public by filing with the clerk of the supreme court, one (1) to be furnished to the board of commissioners of the Idaho state bar, and one (1) to the legislative counsel; and report to the supreme court on these data at such other times as may be requested by the chief justice.

(d) Examine the administrative and business methods and systems employed in the offices of the judges, clerks and other officers of the courts related to and serving the courts, and make recommendations to the supreme court for improvement.

(e) Formulate and submit to the supreme court recommendations for the improvement of the judicial system.

History.
1949, ch. 93, § 2, p. 168; am. 1967, ch. 39, § 2, p. 61; am. 1974, ch. 14, § 2, p. 300; am. 2011, ch. 25, § 1, p. 66.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 25, substituted "fiscal year" for "calendar year" near the beginning of subsections (a) and (c).

CHAPTER 7

DISTRICT COURTS

SECTION.

1-703. Jurisdiction of judges where more than one — Administrative judge. — Where there is more than one (1) judge in any district, the jurisdiction of the respective judges of said district shall be equal and coextensive with the boundaries of the district. In each judicial district there shall be an administrative judge elected by a majority of the district judges within the district to serve for a period of time as provided by rules of the Idaho supreme court. In the event a majority of the district judges cannot agree as to who shall be the administrative judge, then the appointment of the administrative judge shall be by a majority of the Idaho supreme court justices for a period of time as provided by rules of the Idaho supreme court. The administrative judge is hereby granted all powers and duties heretofore or hereafter granted to the senior district judge, and the administrative judge shall apportion the business of such district among such judges as equally as may be, but any judge shall have full power to hold terms of court, transact judicial business, make orders, grant or refuse writs and generally exercise all the powers of a district judge without the concurrence of the other judge or judges. The administrative judge shall receive an annual salary in an amount of two thousand dollars ($2,000) greater than the annual salary of a district judge to compensate for the additional duties of the office.

History.
1911, ch. 4, § 1, p. 6; compiled and reen. C.L., § 3829b; C.S., § 6456; I.C.A., § 1-703; am. 1973, ch. 306, § 1, p. 666; am. 1974, ch. 26, § 1, p. 804; am. 1985, ch. 29, § 2, p. 52; am. 2004, ch. 320, § 1, p. 904; am. 2014, ch. 291, § 2, p. 734.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 291, substituted "two thousand dollars ($2,000)" for "one thousand five hundred dollars ($1,500)" in the last sentence in the section.

CHAPTER 8

JUDICIAL DISTRICTS

SECTION.

1-804. Third district — Number of judges — Resident chambers. — (1) The third judicial district shall consist of the counties of Adams, Washington, Payette, Gem, Canyon and Owyhee.

(2) The third judicial district shall have seven (7) district judges.

(3) Resident chambers of the district judges of the third judicial district shall be established as follows:

(a) One (1) resident chambers shall be established in Washington or Payette County.

(b) Six (6) resident chambers shall be established in Canyon County.

History.

I.C., § 1-804 as reenacted 1967, ch. 51, § 1, p. 95; am. 1977, ch. 26, § 1, p. 48; am. 1982, ch. 301, § 1, p. 763; am. 1985, ch. 39, § 1, p. 81; am. 1996, ch. 426, § 1, p. 1453; am. 2006, ch. 266, § 2, p. 827; am. 2013, ch. 38, § 1, p. 79.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 38, substituted "seven (7)" for "six (6)" in subsection (2) and substituted "Six (6)" for "Five (5)" at the beginning of paragraph (3)(b).

Effective Dates.

Section 4 of S.L. 2013, ch. 38 provided that the act should take effect on and after October 1, 2013.

1-805. Fourth district — Number of judges — Resident chambers. — (1) The fourth judicial district shall consist of the counties of Valley, Boise, Ada and Elmore.

(2) The fourth judicial district shall have eleven (11) district judges.

(3) Resident chambers of the district judges of the fourth judicial district shall be established as follows:

(a) Ten (10) resident chambers shall be established in Ada County;

(b) One (1) resident chambers shall be established in Ada or Elmore County.

History.

I.C., § 1-805 as reenacted 1967, ch. 5, § 1, p. 95; am. 1969, ch. 80, § 1, p. 233; am. 1976, ch. 19, § 1, p. 50; am. 1978, ch. 26, § 1, p. 52; am. 1982, ch. 102, § 1, p. 281; am. 1993, ch. 248, § 1, p. 869; am. 1998, ch. 94, § 1, p. 340; am. 2007, ch. 104, § 1, p. 308; am. 2013, ch. 38, § 2, p. 79.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 38, substituted "eleven (11)" for "ten (10)" in subsection (2) and substituted "Ten (10)" for "Nine (9)" at the beginning of paragraph (3)(a).

Effective Dates.

Section 4 of S.L. 2013, ch. 38 provided that the act should take effect on and after October 1, 2013.

1-808. Seventh district — Number of judges — Resident chambers. — (1) The seventh judicial district shall consist of the counties of Lemhi, Custer, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bonneville and Bingham.

(2) The seventh judicial district shall have six (6) district judges.

(3) Resident chambers of the district judges of the seventh judicial district shall be established as follows:

(a) One (1) resident chambers shall be established in Madison County;
(b) One (1) resident chambers shall be established in Bingham County;
(c) Three (3) resident chambers shall be established in Bonneville County;
(d) One (1) resident chambers shall be established in Jefferson County.

History.
I.C., § 1-808 as reenacted 1967, ch. 51, § 1, p. 95; am. 1993, ch. 248, § 3, p. 869; am. 2013, ch. 38, § 3, p. 79.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 38, substituted "six (6)" for "five (5)" in subsection (2) and added paragraph (3)(d).

Effective Dates.
Section 4 of S.L. 2013, ch. 38 provided that the act should take effect on and after October 1, 2013.

CHAPTER 16

MISCELLANEOUS PROVISIONS

SECTION.

1-1603. Powers of court.

JUDICIAL DECISIONS

Enforcement of Judgment.
Magistrate court had authority under subsection (1) of this section to consider a wife's motion to adjust an equalization payment due to her in a divorce proceeding as an action to enforce the judgment. Vierstra v. Vierstra, 153 Idaho 873, 292 P.3d 264 (2012).

1-1622. Incidental means to exercise jurisdiction.

JUDICIAL DECISIONS

Cited in: Terra-West, Inc. v. Idaho Mut. Trust, LLC, 150 Idaho 393, 247 P.3d 620 (2010).

1-1623. Court technology fund — Annual report. — (1) There is hereby created in the office of the state treasurer the court technology fund. Moneys deposited into the fund pursuant to sections 1-2303, 1-2311, 10-1305, 31-3201, 31-3201A, 31-3201H and 31-3221, Idaho Code, upon appropriation by the legislature, shall be used by the supreme court for the purpose of maintaining, replacing and enhancing the court technology program, and other technologies that assist in the efficient management of the courts or that improve access to the courts and court records including, but not limited to, a system for payments by credit card or debit card as provided in section 31-3221, Idaho Code, development of electronic filing of documents in court cases, video conferencing and electronic access to court records. The court technology fund shall be separate and distinct from the

state general fund, and expenditures from the court technology fund shall be solely dedicated to the purposes set forth in this section. Moneys deposited into the fund may be allowed to accumulate from year to year for designated maintenance, replacement, extension or enhancement of the court technology program and for other technologies that assist in the efficient management of the courts. Interest earned on the investment of idle moneys in the court technology fund shall be returned to the court technology fund.

(2) On or before the first day of each legislative session, the supreme court shall provide an annual report for the previous fiscal year to the governor, the chairman of the judiciary and rules committee of the senate, the chairman of the judiciary, rules and administration committee of the house of representatives and the chairmen of the joint finance-appropriations committee that summarizes the status of the court technology fund, the maintenance, replacement, extension or enhancement of court technology, and the manner and extent to which court technology has advanced the timely resolution of cases, improved access to the courts, produced savings and made more effective use of judicial resources.

History.

I.C., § 1-1623, as added by 1997, ch. 28, § 1, p. 48; am. 1998, ch. 76, § 2, p. 274; am. 2005, ch. 240, § 1, p. 743; am. 2006, ch. 73, § 1, p. 226; am. 2010, ch. 205, § 1, p. 446; am. 2014, ch. 190, § 1, p. 506.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 190, rewrote the section to the extent that a detailed comparison is impracticable, changing "Idaho statewide trial court automated records system technology fund" or "ISTARS technology fund" to "court technology fund" and adding subsection (2).

CHAPTER 20

JUDGES' RETIREMENT AND COMPENSATION

1-2001. Supreme court justices, court of appeals judges and district judges — Age of retirement — Compensation on retirement. —

(1)(a) Every person who served as a justice of the supreme court or judge of the court of appeals or district judge of the district court and who was receiving benefits from the judges' retirement fund before July 1, 2000, for

such service, shall be entitled to benefits from the fund according to the formula for calculating such benefits as provided in section 1-2001(2)(a), Idaho Code.

(b) The term "retirement board" as used in this chapter shall mean the retirement board created by section 59-1304, Idaho Code.

(2) Any person who is now serving or who shall hereafter serve as a justice of the supreme court, a judge of the court of appeals, or a district judge of a district court of this state shall prior to retirement elect in writing to retire under either paragraph (a) or (b) of this subsection, provided that a person who has first assumed office as a supreme court justice, judge of the court of appeals or district judge on or after July 1, 2012, and who is eligible to receive an annual retirement compensation only under the criteria set forth in subsection (3)(c) of this section, may retire only under paragraph (a) of this subsection. Any person who fails to make the election provided for in this subsection prior to retirement shall receive retirement compensation under the provisions of paragraph (a) of this subsection.

(a)(i) On or after July 1, 2000, any person who has served or who is now serving or who shall hereafter serve as a justice of the supreme court, a judge of the court of appeals, or a district judge of a district court of this state may leave office or retire and be entitled to receive and to have paid from the date of his retirement until death, an annual retirement compensation payable in monthly installments on the first day of each month.

(ii) A person who assumed office as a supreme court justice, judge of the court of appeals or district judge prior to July 1, 2012, shall receive an annual retirement compensation based upon a percentage of the current annual compensation of the highest office in which such person served, unless such person makes an irrevocable election no later than August 1, 2012, to receive upon retirement an annual retirement compensation based upon the provisions in this paragraph applicable to justices or judges who first assumed such office on or after July 1, 2012.

(iii) A person who first assumed office as a supreme court justice, judge of the court of appeals or district judge on or after July 1, 2012, shall receive an annual retirement compensation based upon a percentage of the annual compensation at the time of such person's retirement or resignation from the highest office in which such person served, and such compensation shall be adjusted annually by the postretirement allowance adjustment established pursuant to section 59-1355, Idaho Code.

(iv) The percentage applicable to all retiring justices and judges shall be equal to five percent (5%) multiplied by the number of years served as either justice or judge or both, for the first ten (10) years of service plus two and one-half percent (2 1/2%) multiplied by the remaining number of years served as either justice or judge or both, but in any event the total percentage shall not be greater than seventy-five percent (75%).

(b)(i) On or after July 1, 2000, any person who is now serving or who shall hereafter serve as a justice of the supreme court, a judge of the court of

appeals, or a district judge of a district court of this state may retire from office and be entitled to receive and to have paid from the date of his retirement until death, an annual retirement compensation payable in monthly installments on the first day of each month.

(ii) A person who assumed office as a supreme court justice, judge of the court of appeals or district judge prior to July 1, 2012, shall receive an annual retirement compensation based upon a percentage of the current annual compensation of the highest office in which such person served, unless such person makes an irrevocable election no later than August 1, 2012, to receive upon retirement an annual retirement compensation based upon the provisions in this paragraph applicable to justices or judges who first assumed such office on or after July 1, 2012.

(iii) A person who first assumed office as a supreme court justice, judge of the court of appeals or district judge on or after July 1, 2012, shall receive an annual retirement compensation based upon a percentage of the annual compensation at the time of such person's retirement or resignation of the highest office in which such person served, and such compensation shall be adjusted annually by the postretirement allowance adjustment established pursuant to section 59-1355, Idaho Code.

(iv) The percentage applicable to all retiring justices and judges shall be equal to five percent (5%) multiplied by the number of years served as either justice or judge or both for the first ten (10) years of service plus two and one-half percent (2 1/2%) multiplied by the remaining number of years served as either justice or judge or both, plus two and one-half percent (2 1/2%) multiplied by five (5) years senior judge service but in any event the total percentage shall not be greater than seventy-five percent (75%).

(c)(i) A justice or judge electing to retire under paragraph (b) of this subsection and who assumed office as a supreme court justice, judge of the court of appeals or district judge prior to July 1, 2012, shall serve as a senior judge, without compensation other than annual health benefits, for thirty-five (35) days per year for a period of five (5) years.

(ii) A justice or judge electing to retire under paragraph (b) of this subsection who first assumed office as a supreme court justice, judge of the court of appeals or district judge on or after July 1, 2012, shall serve as a senior judge, without compensation other than annual health benefits, for sixty (60) days per year for a period of five (5) years.

(iii) A justice or judge who serves more than the required number of days per year may carry over the additional days to fulfill the senior judge service obligation in future years. The terms and conditions of such senior judge service shall be as provided under section 1-2005, Idaho Code.

(d) Upon certification from the chief justice that any justice or judge who retired under paragraph (b) of this subsection has failed to perform the senior judge services required under paragraph (c) of this subsection, and has not been relieved of the obligations to perform those services in the manner provided by this subsection, the judges' retirement fund shall recalculate the retirement compensation benefits of the noncomplying

justice or judge under paragraph (a) of this subsection, and the noncomplying justice or judge shall thereafter receive only the recalculated amount.

(e) A justice or judge may be relieved of the senior judge service obligation imposed by this subsection if he fails for good cause to complete the obligation. A retired justice or judge who is relieved of the obligation to serve as a senior judge shall continue to receive the retirement allowance provided under paragraph (b) of this subsection.

(f) "Good cause" includes, but is not limited to:

(i) Physical or mental incapacitation of a justice or judge that prevents the justice or judge from discharging the duties of judicial office;

(ii) Failure of the supreme court to assign a senior judge to the requisite amount of senior judge service, whether because of insufficient need for senior judges, a determination by the supreme court that the skills of a senior judge do not match the needs of the courts, clerical mistake or otherwise; or

(iii) Death of a senior judge.

(g) "Good cause" does not include:

(i) A senior judge's refusal, without good cause, to accept senior judge assignments sufficient to meet the required amount; or

(ii) A senior judge's affirmative voluntary act that makes him unqualified to serve as a judge of this state including, but not limited to, failure to maintain a residence within the state, commencing the practice of law other than as a mediator, arbitrator or similar alternative dispute resolution function, acceptance of a position in another branch of state government or political subdivision, or the acceptance of a position in the government of the United States or of another state or nation.

(h) The supreme court may make rules for the implementation of this subsection.

(3) On or after July 1, 2000, each person who has served but is not receiving benefits or who is now serving or who shall hereafter serve who shall leave office or retire as justice of the supreme court, judge of the court of appeals, or district judge of a district court in this state shall be eligible to receive an annual retirement compensation when such person shall meet one (1) of the following eligibility criteria:

(a) Attaining the age of sixty-five (65) years and having a minimum service of four (4) years;

(b) Attaining the age of sixty (60) years and having a minimum service of ten (10) years;

(c) Attaining the age of fifty-five (55) years and having a minimum service of fifteen (15) years; or

(d) At any age after twenty (20) years of service.

(4)(a) On or after July 1, 2000, each justice or judge who is now serving or who shall hereafter be appointed or elected and who shall retire by reason of disability preventing him from further performance of the duties of his office, after a service in any or all of said courts of four (4) years or more, shall, upon retirement, be entitled to receive and to have paid to him until death an annual retirement compensation payable in monthly installments on the first day of each month.

(b) A person who assumed office as a supreme court justice, judge of the court of appeals or district judge prior to July 1, 2012, shall receive an annual retirement compensation based upon a percentage of the current annual compensation of the highest office in which such person served, unless such person makes an irrevocable election no later than August 1, 2012, to receive upon retirement an annual retirement compensation based upon the provisions in this subsection applicable to justices or judges who first assumed such office on or after July 1, 2012.

(c) A person who first assumed office as a supreme court justice, judge of the court of appeals or district judge on or after July 1, 2012, shall receive an annual retirement compensation based upon a percentage of the annual compensation at the time of such person's retirement or resignation from the highest office in which such person has served, and such compensation shall be adjusted annually by the postretirement allowance adjustment established pursuant to section 59-1355, Idaho Code.

(d) The percentage applicable to all justices and judges who retire by reason of disability shall be equal to five percent (5%) multiplied by the number of years served as either justice or judge or both, for the first ten (10) years of service, plus two and one-half percent (2 1/2%) multiplied by the remaining number of years served as either justice or judge or both, but such percentage shall not exceed seventy-five percent (75%).

(5) All retirement compensation shall be paid out of the judges' retirement fund, provided however, that a justice or judge who has served less than four (4) years shall be entitled to have refunded to him all contributions made by him to the judges' retirement fund, with six and one-half percent (6 1/2%) interest computed annually but shall not be entitled to any other compensation from the fund.

(6) A person who has retired from the office of supreme court justice, judge of the court of appeals or district judge prior to July 1, 2012, or any other person receiving benefits as of July 1, 2012, may make an irrevocable election no later than August 1, 2012, to thereafter receive an annual retirement compensation or allowance equal to the amount of the annual retirement compensation or allowance such person was receiving as of July 1, 2012, and to have such compensation or allowance thereafter adjusted annually by the postretirement allowance adjustment established pursuant to section 59-1355, Idaho Code.

(7) Notwithstanding any other provision of this section, any person who makes an election to remain in the public employee retirement system of Idaho as provided in section 1-2011, Idaho Code, shall not participate in the judges' retirement fund established in this chapter, but shall continue to participate in the public employee retirement system of Idaho and be governed under the provisions of that system, except as provided in section 1-2005, Idaho Code.

History.

I.C., § 1-2001, as added by 2000, ch. 385, § 2, p. 1248; am. 2012, ch. 330, § 1, p. 911.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 330, rewrote the section to the extent that a detailed comparison is impracticable.

1-2001b. Conversion of retirement compensation into optional retirement allowances — Form of optional retirement. — (1) The retirement compensation of a justice or judge who, at the time of retirement, so elects shall be converted into an optional retirement allowance which is the actuarial equivalent of such retirement compensation to which the justice or judge would otherwise be entitled under section 1-2001, Idaho Code, including the value of the spousal benefit provided by section 1-2009, Idaho Code, provided the spouse is the contingent annuitant. The optional retirement allowance may take one (1) of the forms listed below and shall be in lieu of all other retirement compensation and benefits under this chapter, except the death benefit provided by section 1-2010, Idaho Code.

(a) Option 1 provides a reduced retirement allowance payable during the lifetime of the retired justice or judge, and a continuation thereafter of such reduced retirement allowance during the lifetime of the justice or judge's named contingent annuitant.

(b) Option 2 provides a reduced retirement allowance payable during the lifetime of the retired justice or judge, and a continuation thereafter of one-half (1/2) of such reduced retirement allowance during the lifetime of the justice or judge's named contingent annuitant.

(2) Should the named contingent annuitant under option 1 or option 2 predecease a justice or judge, upon notification to the retirement board, the justice or judge's benefit on the first day of the month following the death of the contingent annuitant will thereafter become an allowance calculated pursuant to section 1-2001, Idaho Code.

(3) Application for any optional retirement allowance shall be in writing, duly executed and filed with the retirement board. Such application shall contain all information required by the retirement board, including such proofs of age as are deemed necessary by the retirement board.

(4) A retirement option elected at the time of retirement as provided for in this section may not be changed except by written notice to the retirement board no later than five (5) business days after the receipt of the first retirement allowance.

(5) Not later than one (1) year after the marriage of a retired justice or judge, the justice or judge may elect option 1 or 2 to become effective one (1) year after the date of such election, provided the justice or judge's spouse is named as a contingent annuitant, and either:

(a) The justice or judge was not married at the time of retirement; or

(b) The justice or judge earlier elected option 1 or 2, having named the justice or judge's spouse as contingent annuitant, and said spouse has died.

(6) Each justice or judge receiving retirement compensation on July 1, 2000, shall have a one-time irrevocable election to name a spouse as a contingent annuitant under subsection (1)(a) of this section.

History.
I.C., § 1-2001b, as added by 2000, ch. 385, § 3, p. 1248; am. 2012, ch. 330, § 2, p. 911.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 330, substituted "retirement board" for "supreme court" throughout the section.

Compiler's Notes.
Pursuant to S.L. 2012, ch. 330, § 13, this section has been amended by S.L. 2012, ch. 330, § 2, effective "on and after the first July 1 occurring at least three months after the Retirement Board has informed the Secretary of State that the Supreme Court has received a determination letter from the Internal Revenue Service ruling that the terms of the judges' retirement plan meet the applicable requirements of a qualified plan under U.S.C. Section 401(a) and that any changes to the judges' retirement plan required by the Internal Revenue Service or the determination letter have been made." On January 23, 2014, the Secretary of State received a letter, dated January 22, 2014, from the PERSI retirement board that noted that the board had received a determination letter from the IRS, dated June 17, 2013, stating that the judges' retirement plan met the requirements of 26 USCS § 401(a). This receipt of notice made the 2012 amendment of this section effective on July 1, 2014.

1-2002. Judges' retirement fund — Powers and duties of the retirement board — Indemnification. — (1) For the purpose of paying such retirement compensation, there is hereby created in the office of the treasurer of the state of Idaho a fund to be known as the "Judges' Retirement Fund," which shall be separate and apart from all public moneys or funds of this state, which shall be maintained in trust exclusively for the purpose of the provisions of this chapter, and which shall consist of all moneys appropriated from the general fund, and all moneys received from special fees to be paid by parties to civil actions and proceedings, other than criminal, commenced in or appealed to the several courts of the state, together with all contributions out of the salaries and compensation of justices and judges, and interest received from investment, and reinvestment, of moneys of the judges' retirement fund, all as hereinafter provided. The retirement board shall serve as trustee of the trust.

(2) The members of the retirement board, public employee retirement system staff and mortgage and investment committee members shall be provided a defense and indemnified, and the retirement board may determine to provide a defense and indemnity, or refuse a defense and disavow and refuse to pay any judgment, to the same extent as provided in section 59-1305(1), Idaho Code.

(3) All sums of money so accrued and accruing to the judges' retirement fund, less an amount deemed reasonable and necessary by the retirement board to pay for administrative expenses of the judges' retirement fund, are hereby appropriated to the payment of the annual retirement compensation of such retired justices and judges, and to payment of the allowances to surviving spouses.

(4) The retirement board shall submit an annual report for each fiscal year on the status and condition of the judges' retirement fund to the supreme court, to the chairman of the judiciary and rules committee of the senate, to the chairman of the judiciary, rules and administration committee of the house and to the chairmen of the joint finance-appropriations

committee. Such report shall include a fiscal year end actuarial evaluation of the judges' retirement fund and shall include a specific report on any costs or savings arising from the retirement of persons under the provisions of subsection (2)(b) of section 1-2001, Idaho Code. The retirement board shall consult with the administrative director of the courts concerning any prospective changes or amendments to statutes and rules relating to the judges' retirement fund.

History.
1947, ch. 104, § 2, p. 210; am. 1965, ch. 308, § 3, p. 835; am. 1982, ch. 299, § 1, p. 760; am. 2012, ch. 330, § 4, p. 911.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 330, § 3, added the last paragraph.

The 2012 amendment, by ch. 330, § 4, added "Powers and duties of the retirement board — Indemnification" to the section heading; added the subsection designations; in subsection (1), added "which shall be separate and apart from all public moneys or funds of this state, which shall be maintained in trust exclusively for the purpose of the provisions of this chapter, and" in the first sentence and added the last sentence; added subsection (2), in subsection (3), substituted " retirement board to pay for administrative expenses of" for "administrative director of the courts to pay for necessary actuarial studies to assist in administering"; and added subsection (4).

Compiler's Notes.

Pursuant to S.L. 2012, ch. 330, § 13, this section has been amended by S.L. 2012, ch. 330, § 4, effective "on and after the first July 1 occurring at least three months after the Retirement Board has informed the Secretary of State that the Supreme Court has received a determination letter from the Internal Revenue Service ruling that the terms of the judges' retirement plan meet the applicable requirements of a qualified plan under U.S.C. Section 401(a) and that any changes to the judges' retirement plan required by the Internal Revenue Service or the determination letter have been made." On January 23, 2014, the Secretary of State received a letter, dated January 22, 2014, from the PERSI retirement board that noted that the board had received a determination letter from the IRS, dated June 17, 2013, stating that the judges' retirement plan met the requirements of 26 USCS § 401(a). This receipt of notice made the 2012 amendment of this section by ch. 330, effective on July 1, 2014.

Section 3 of S.L. 2012, chapter 330 was repealed by the same conditions and contingencies which made the amendment of this section by S.L. 2012, ch. 330, § 4 effective July 1, 2014.

1-2003. Additional fees in civil actions and appeals. — (a) In addition to the fees and charges to be collected by the clerks of the district courts of the state and by other persons authorized by rule or administrative order of the supreme court as now or hereafter provided by law, such clerks and authorized persons are directed to charge and collect the additional sum of twenty-six dollars ($26.00) for filing a civil case or proceeding of any type in the district court or magistrate's division of the district court including cases involving the administration of decedents' estates, whether testate or intestate, conservatorships of the person or of the estate or both and guardianships of the person or of the estate or both, except that no fee shall be charged or collected for filing a proceeding under the summary administration procedure for small estates, part 12, chapter 3, title 15, Idaho Code. The additional sum of twenty-six dollars ($26.00) shall also be collected from any party, except the plaintiff, making an appearance in any civil action in the district court, but such twenty-six dollars ($26.00) fee shall not be collected from the person making an appearance in civil actions filed in the small claims departments of the district court.

(b) The sum of twenty-six dollars ($26.00) shall also be collected:
(1) From an intervenor in an action;
(2) From a party who files a third party claim;
(3) From a party who files a cross claim;
(4) From a party appealing from the magistrate's division of the district court to the district court;
(5) From a party appealing the decision of any commission, board or body to the district court.

(c) The clerk of the supreme court is authorized and directed to charge and collect, in addition to the fees now prescribed by law and as a part of the cost of filing the transcript on appeal in any civil case or proceeding, other than criminal, appealed to the supreme court, the additional sum of twenty-six dollars ($26.00); for filing a petition for rehearing, the additional sum of eighteen dollars ($18.00); for filing an application for any writ for which a fee is now prescribed, the additional sum of eighteen dollars ($18.00); for filing appeals from the industrial commission, the additional sum of thirteen dollars ($13.00).

(d) The clerks of the district courts, persons authorized by rule or administrative order of the supreme court and the clerk of the supreme court are directed and required to remit all additional charges and fees authorized by this section and collected during a calendar month, to the state treasurer within five (5) days after the end of the month in which such fees were collected. Prior to the effective date of section 1-2004A, Idaho Code, the state treasurer shall place all such sums in the judges' retirement fund. On and after the effective date of section 1-2004A, Idaho Code, the state treasurer shall place all such sums in the state general fund.

History.
1947, ch. 104, § 3, p. 210; am. 1963, ch. 169, § 2, p. 489; am. 1967, ch. 246, § 1, p. 713; am. 1967 (1st E.S.), ch. 6, § 1, p. 26; am. 1969, ch. 138, § 1, p. 424; am. 1979, ch. 219, § 3, p. 607; am. 1983, ch. 144, § 4, p. 363; am. 1990, ch. 246, § 1, p. 699; am. 2012, ch. 330, § 5, p. 911.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 330, substituted "twenty-six dollars ($26.00)" for "eighteen ($18.00)" throughout the section; in subsection (c), substituted "eighteen dollar ($18.00)" for "ten dollars ($10.00)" twice, substituted "thirteen dollars ($13.00)" for "five dollars ($5.00)," and substituted "industrial commission" for "industrial accident board"; and, in subsection (d), added "Prior to the effective date of section 1-2004A, Idaho Code" and added the last sentence.

1-2004. Deductions from salaries of justices and judges — Contributions to fund. — (1) The state controller shall deduct from the monthly compensation of each justice and judge now holding office, and from the monthly compensation of each person who shall thereafter assume by election or appointment the office of a justice of the supreme court, a judge of the court of appeals or a judge of a district court, an amount equal to the following percentages of his monthly compensation, and shall issue to such justice or judge a salary warrant in such reduced amount, and shall pay the withheld sums into the judges' retirement fund; provided, however, that

after twenty (20) years of service no deductions shall be taken from a judge's compensation for payment to the judges' retirement fund:

(a) On and after July 1, 2012, and prior to July 1, 2013, seven and sixty-nine hundredths percent (7.69%).

(b) On and after July 1, 2013, and prior to the date on which section 1-2004B, Idaho Code, shall be in full force and effect, nine percent (9%).

(c) On and after the date on which section 1-2004B, Idaho Code, shall be in full force and effect, nine percent (9%) or such other percentage as may be determined pursuant to section 1-2004B, Idaho Code.

(2) Between the first and twentieth day of each month, the supreme court shall, from appropriations made for that purpose as part of the employer's contribution, remit to the judges' retirement fund an amount equal to the following percentages of salaries paid during the previous month to justices and judges who are making contributions to the judges' retirement fund:

(a) On and after July 1, 2012, and prior to July 1, 2013, eight and ninety-seven hundredths percent (8.97%).

(b) On and after July 1, 2013, and prior to the date on which section 1-2004A, Idaho Code, shall be in full force and effect, ten and five-tenths percent (10.5%).

(c) On and after the date on which section 1-2004A, Idaho Code, shall be in full force and effect, ten and five-tenths percent (10.5%) or such other percentage as may be determined pursuant to section 1-2004A, Idaho Code.

History.

1947, ch. 104, § 4, p. 210; am. 1955, ch. 62, § 1, p. 120; am. 1965, ch. 308, § 4, p. 835; am. 1967, ch. 301, § 3, p. 853; am. 1969, ch. 183, § 3, p. 543; am. 1976, ch. 343, § 2, p. 1145; am. 1987, ch. 107, § 1, p. 219; am. 1994, ch. 180, § 3, p. 420; am. 2012, ch. 330, § 6, p. 911.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 330, in subsection (1), inserted "a judge of the court of appeals" and substituted "equal to the following percentages" for "equal to six per cent (6%)" in the introductory paragraph and added paragraphs (a) through (c); and, in subsection (2), substituted "equal to the following percentages" for "equal to seven per cent (7%)" in the introductory paragraph and added the paragraphs (a) through (c).

1-2004A. Employer contributions — Amounts — Rates — Amortization. — (1) The amount of the employer contributions shall consist of the sum of a percentage of the salaries of active members to be known as the "normal cost" and a percentage of such salaries to be known as the "amortization payment." The rates of such contributions shall be determined by the retirement board on the basis of assets and liabilities as shown by the annual actuarial valuation, and such rates shall become effective no later than July 1 of the second year following the year of the most recent actuarial valuation, and shall remain effective until next determined by the retirement board.

(2) The normal cost rate shall be computed to be sufficient, when applied to the actuarial present value of the future salary of the average new justice or judge entering the system, to provide for the payment of all prospective

benefits in respect to such justice or judge which are not provided by the justice's or judge's own contribution.

(3) The amortization rate shall not be less than the minimum amortization rate computed pursuant to subsection (5) of this section, unless a one (1) year grace period has been made effective by the retirement board. During a grace period, the amortization rate shall be no less than the rate in effect during the immediately preceding year. A grace period may not be made effective if more than one (1) other grace period has been effective in the immediately preceding four (4) year period.

(4) Each of the following terms used in this chapter shall have the following meanings:

(a) "Effective date" means the date the rates of contributions based on the valuation become effective pursuant to subsection (1) of this section.

(b) "End date" means the date twenty-five (25) years after the valuation date.

(c) "Projected salaries" means the sum of the annual salaries of all justices and judges.

(d) "Scheduled amortization amount" means the actuarial present value of future contributions payable as amortization payment from the valuation date until the effective date.

(e) "Unfunded actuarial liability" means the excess of the actuarial present value of (i) over the sum of the actuarial present values of (ii), (iii) and (iv) as follows, all determined by the valuation as of the valuation date:

(i) All future benefits payable under this chapter;

(ii) The assets then held by the funding agent for the payment of benefits under this chapter;

(iii) The future normal costs payable in respect of all then active justices and judges;

(iv) The future contributions payable under section 1-2004, Idaho Code, by all current active justices and judges;

(f) "Valuation" means the most recent annual actuarial valuation.

(g) "Valuation date" means the date of such valuation.

(5) The minimum amortization payment rate shall be that percentage, calculated as of the valuation date, of the then actuarial present value of the projected salaries from the effective date to the end date which is equivalent to the excess of the unfunded actuarial liability over the scheduled amortization amount.

History.

I.C., § 1-2004A, as added by 2012, ch. 330, § 7, p. 911.

STATUTORY NOTES

Compiler's Notes.

Pursuant to S.L. 2012, ch. 330, § 13, this section has been enacted by S.L. 2012, ch. 330, § 7, effective "on and after the first July 1 occurring at least three months after the Retirement Board has informed the Secretary of State that the Supreme Court has received a determination letter from the Internal Revenue Service ruling that the terms of the judges' retirement plan meet the applicable requirements of a qualified plan under U.S.C. Section 401(a) and that any changes to the

judges' retirement plan required by the Internal Revenue Service or the determination letter have been made." On January 23, 2014, the Secretary of State received a letter, dated January 22, 2014, from the PERSI retirement board that noted that the board had received a determination letter from the IRS, dated June 17, 2013, stating that the judges' retirement plan met the requirements of 26 USCS § 401(a). This receipt of notice made the 2012 enactment of this section effective on July 1, 2014.

1-2004B. Employee contributions. — The contribution for a justice, judge of the court of appeals or district judge shall be eighteen and five-tenths percent (18.5%) of the employer contribution rate determined pursuant to section 1-2004A, Idaho Code, and rounded to the nearest one hundredth percent (.01%) of salary. The retirement board is specifically authorized to certify to the state controller the necessary adjustments in the rate of member contributions.

History.
I.C., § 1-2004B, as added by 2012, ch. 330, § 8, p. 911.

STATUTORY NOTES

Compiler's Notes.
Pursuant to S.L. 2012, ch. 330, § 13, this section has been enacted by S.L. 2012, ch. 330, § 8, effective "on and after the first July 1 occurring at least three months after the Retirement Board has informed the Secretary of State that the Supreme Court has received a determination letter from the Internal Revenue Service ruling that the terms of the judges' retirement plan meet the applicable requirements of a qualified plan under U.S.C. Section 401(a) and that any changes to the judges' retirement plan required by the Internal Revenue Service or the determination letter have been made." On January 23, 2014, the Secretary of State received a letter, dated January 22, 2014, from the PERSI retirement board that noted that the board had received a determination letter from the IRS, dated June 17, 2013, stating that the judges' retirement plan met the requirements of 26 USCS § 401(a). This receipt of notice made the 2012 enactment of this section effective on July 1, 2014.

1-2008. Investment of judges' retirement fund. — (1) The retirement board shall select and contract with investment managers registered with the securities and exchange commission to manage the investment of the judges' retirement fund. The investment managers shall, subject to the direction of the board, exert control over the funds as though the investment managers were the owners thereof and are hereby authorized to invest the judges' retirement fund as hereinafter provided.

(a) The retirement board shall formulate an investment policy governing the investment of judges' retirement funds. The policy shall pertain to the types, kinds or nature of investment of any of the funds, and any limitations, conditions or restrictions upon the methods, practices or procedures for investment, reinvestments, purchases, sales or exchange transactions.

(b) In acquiring, investing, reinvesting, exchanging, retaining, selling and managing the moneys and securities of the fund, investment managers shall also be governed by the prudent man investment act, sections 68-501 through 68-506, Idaho Code; provided, however, that the retirement board may in its sole discretion, limit the types, kinds and amounts of such investments.

(c) The retirement board shall adopt the actuarial tables and assump-

tions in use by the judges' retirement fund and may change the same in its sole discretion at any time.

(2) The retirement board is hereby authorized to select and contract with a bank or trust company authorized to do business in the state of Idaho, to act as custodian of the judges' retirement fund, who shall hold all securities and moneys of the judges' retirement fund and shall collect the principal, dividends and interest thereof when due and pay the same into the judges' retirement fund.

(3) The state treasurer shall pay all warrants drawn on the judges' retirement fund for making such investments when issued pursuant to vouchers approved by the retirement board.

History.

I.C., § 1-2008, as added by 1990, ch. 247, § 2, p. 700; am. 1994, ch. 180, § 5, p. 420; am. 2003, ch. 32, § 2, p. 115; am. 2004, ch. 240, § 1, p. 702; am. 2012, ch. 330, § 9, p. 911.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 330, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

Pursuant to S.L. 2012, ch. 330, § 13, this section has been amended by S.L. 2012, ch. 330, § 9, effective "on and after the first July 1 occurring at least three months after the Retirement Board has informed the Secretary of State that the Supreme Court has received a determination letter from the Internal Revenue Service ruling that the terms of the judges' retirement plan meet the applicable requirements of a qualified plan under U.S.C. Section 401(a) and that any changes to the judges' retirement plan required by the Internal Revenue Service or the determination letter have been made." On January 23, 2014, the Secretary of State received a letter, dated January 22, 2014, from the PERSI retirement board that noted that the board had received a determination letter from the IRS, dated June 17, 2013, stating that the judges' retirement plan met the requirements of 26 USCS § 401(a). This receipt of notice made the 2012 amendment of this section effective on July 1, 2014.

1-2009. Benefit to surviving spouse of justice or judge. — The legislature hereby finds and declares that the payment of allowances to the surviving spouses of justices of the supreme court, judges of the court of appeals and district judges of the district court of the state of Idaho, serves the public purpose of promoting the public welfare by encouraging experienced jurists to continue their service and that their continued service and increased efficiency will be secured in the expectation that the legislature will fairly provide for their surviving spouses, and that such continued service and increased efficiency of such jurists, secure in this knowledge, will be of substantial benefit to the state.

The surviving spouse, of any justice or judge entitled to benefits under this chapter who dies on or after July 1, 1965, shall receive an allowance from the judges' retirement fund, payable monthly, and as hereinafter provided.

(a) In the case of a justice or judge receiving retirement compensation at the time of death, allowance to his surviving spouse shall commence immediately and be payable to such spouse from such fund in an amount equal to fifty percent (50%) of the retirement compensation to which such justice or judge would be entitled under section 1-2001(2), Idaho Code;

provided, that the allowance payable to the surviving spouse of a justice or judge who first assumed the office of supreme court justice, judge of the court of appeals or district judge on or after July 1, 2012, shall be thirty percent (30%) of the retirement compensation to which such justice or judge would be entitled.

(b) In the case of a justice or judge who has service as a justice of the supreme court, judge of the court of appeals or district judge of four (4) years or more and is not receiving retirement compensation at the time of death, commencing immediately, the surviving spouse shall be paid an allowance from such fund in the amount of fifty percent (50%) of the retirement compensation to which the justice or judge would have been entitled under section 1-2001(2)(a), Idaho Code, as if the justice or judge was eligible to retire and had retired immediately before his death; provided, that the allowance payable to the surviving spouse of a justice or judge who first assumed the office of supreme court justice, judge of the court of appeals or district judge on or after July 1, 2012, shall be thirty percent (30%) of the retirement compensation to which such justice or judge would have been entitled, as if the justice or judge was eligible to retire and had retired immediately before his death.

(c) The allowance shall be paid until the death of the surviving spouse.

(d) The surviving spouse of a justice or judge who is not receiving benefits from the judges' retirement fund at the time of the justice's or judge's death may elect to take an optional retirement allowance as a surviving annuitant under option 1 of section 1-2001b(1)(a), Idaho Code. Such optional retirement allowance shall be calculated as if the justice or judge was eligible to retire and had retired immediately before his death.

History.

I.C., § 1-2009, as added by 1965, ch. 308, § 5, p. 835; am. 1967, ch. 301, § 6, p. 853; am. 1969, ch. 183, § 5, p. 543; am. 1974, ch. 244, § 2, p. 1618; am. 1983, ch. 144, § 3, p. 363; am. 1997, ch. 150, § 1, p. 427; am. 2000, ch. 385, § 6, p. 1248; am. 2012, ch. 330, § 10, p. 911.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 330, added the provisos at the end of subsections (a) and (b).

1-2010. Death benefit. — (1) The death benefit of a deceased justice or judge is the excess, if any, of the justice's or judge's accumulated contributions to the judges' retirement fund, including accrued interest at the rate provided in section 1-2001(5), Idaho Code, over the aggregate of all retirement compensation payments and allowances ever made to the justice, judge, spouse or annuitant from the judges' retirement fund.

(2) The death benefit is payable, and all other retirement compensation benefits and allowances shall cease, upon the death of the justice, judge, spouse or annuitant receiving a retirement compensation or allowance.

(3) The death benefit shall be paid to the beneficiary named by the justice or judge in a written designation of beneficiary on file with the retirement board if the beneficiary is surviving at the time the death benefit is payable;

otherwise the death benefit shall be paid to the estate of the deceased justice or judge for distribution in accordance with the laws of descent and distribution of the state of Idaho as they may then be in effect.

History.
I.C., § 1-2010, as added by 1997, ch. 150, § 2, p. 427; am. 2000, ch. 385, § 7, p. 1248; am. 2012, ch. 330, § 11, p. 911.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 330, substituted "retirement board" for "supreme court" in subsection (3).

Compiler's Notes.
Pursuant to S.L. 2012, ch. 330, § 13, this section has been amended by S.L. 2012, ch. 330, § 11, effective "on and after the first July 1 occurring at least three months after the Retirement Board has informed the Secretary of State that the Supreme Court has received a determination letter from the Internal Revenue Service ruling that the terms of the judges' retirement plan meet the applicable requirements of a qualified plan under U.S.C. Section 401(a) and that any changes to the judges' retirement plan required by the Internal Revenue Service or the determination letter have been made." On January 23, 2014, the Secretary of State received a letter, dated January 22, 2014, from the PERSI retirement board that noted that the board had received a determination letter from the IRS, dated June 17, 2013, stating that the judges' retirement plan met the requirements of 26 USCS § 401(a). This receipt of notice made the 2012 amendment of this section effective on July 1, 2014.

1-2012. Rules and administrative policies. — Subject to the other provisions of this chapter, the retirement board shall have the power and authority to adopt, amend and rescind such rules and administrative policies as may be necessary for the proper administration of this chapter.

History.
I.C., § 1-2012, as added by 2006, ch. 72, § 1, p. 225; am. 2012, ch. 330, § 12, p. 911.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 330, substituted "retirement board" for "supreme court".

Compiler's Notes.
Pursuant to S.L. 2012, ch. 330, § 13, this section has been amended by S.L. 2012, ch. 330, § 12, effective "on and after the first July 1 occurring at least three months after the Retirement Board has informed the Secretary of State that the Supreme Court has received a determination letter from the Internal Revenue Service ruling that the terms of the judges' retirement plan meet the applicable requirements of a qualified plan under U.S.C. Section 401(a) and that any changes to the judges' retirement plan required by the Internal Revenue Service or the determination letter have been made." On January 23, 2014, the Secretary of State received a letter, dated January 22, 2014, from the PERSI retirement board that noted that the board had received a determination letter from the IRS, dated June 17, 2013, stating that the judges' retirement plan met the requirements of 26 USCS § 401(a). This receipt of notice made the 2012 amendment of this section effective on July 1, 2014.

CHAPTER 21

JUDICIAL COUNCIL

SECTION.

1-2102. Duties of council. — The judicial council shall:

(1) Conduct studies for the improvement of the administration of justice;

(2) Make reports to the supreme court and legislature at intervals of not more than two (2) years;

(3) Submit to the governor the names of not less than two (2) nor more than four (4) qualified persons for each vacancy in the office of justice of the supreme court, judge of the court of appeals, or district judge, one (1) of whom shall be appointed by the governor; provided, that the council shall submit only the names of those qualified persons who are eligible to stand for election pursuant to section 1-2404, 34-615 or 34-616, Idaho Code;

(4) Recommend the removal, discipline and retirement of judicial officers, including magistrates;

(5) Prepare an annual budget request in the form prescribed in section 67-3502, Idaho Code, and submit such request to the supreme court, which shall include such request as submitted by the judicial council in the annual budget request of the judicial department; and

(6) Such other duties as may be assigned by law.

History.
1967, ch. 67, § 2, p. 153; am. 1985, ch. 29, § 3, p. 52; am. 1990, ch. 71, § 2, p. 152; am. 2011, ch. 13, § 1, p. 40.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 13, added present subsection (5) and redesignated former subsection (5) as subsection (6).

CHAPTER 22

MAGISTRATE DIVISION OF THE DISTRICT COURT

SECTION.

1-2222. Salary schedule — Attorney and nonattorney magistrates. [Repealed.]

Repealed by S.L. 2014, ch. 291, § 3, effective July 1, 2014.

History.
I.C., § 1-2222, as added by 1982, ch. 217, § 1, p. 590; am. 1984, ch. 22, § 6, p. 25; am. 1985, ch. 29, § 4, p. 52; am. 1988, ch. 23, § 1, p. 25; am. 1990, ch. 39, § 1, p. 59; am. 1993, ch. 217, § 1, p. 680; am. 1996, ch. 257, § 1, p. 841; am. 1997, ch. 67, § 1, p. 141; am. 1998, ch. 93, § 1, p. 338; am. 1999, ch. 250, § 1, p. 648; am. 2000, ch. 386, § 1, p. 1258; am. 2001, ch. 309, § 1, p. 1115; am. 2004, ch. 306, § 1, p. 855; am. 2005, ch. 399, § 3, p. 1361.

CHAPTER 23

SMALL CLAIMS DEPARTMENT OF THE MAGISTRATE DIVISION

1-2303. Filing of claim — Default. — (1) Upon filing a claim, the clerk shall furnish to the plaintiff a form of answer and instructions to the defendant, which among other matters shall advise the defendant that if the defendant desires to have a hearing on the matter, the defendant must sign, complete and file the answer with the clerk. The instructions also shall notify the defendant that if the defendant does not sign and file the answer within twenty (20) days from the date of service on the defendant, judgment will be entered as requested in the claim.

(2) If no answer is filed within twenty (20) days, judgment may be entered by the court as provided in Rule 55, I.R.C.P. If an answer is filed by the defendant, the court shall set the matter for trial or mediation by notice mailed to each party.

(3) The court shall collect in advance upon each claim the sum of thirty-three dollars ($33.00), which shall be in addition to the costs necessary to effect service of the claim upon the defendant. This fee shall be distributed as follows: seven dollars ($7.00) shall be paid to the county treasurer for deposit in the district court fund of the county; six dollars ($6.00) shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fee to the state treasurer for deposit in the senior magistrate judges fund; and twenty dollars ($20.00) shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the court technology fund.

History.
I.C., § 1-2303, am. 2000, ch. 250, § 5, p. 702; am. 2009, ch. 80, § 1, p. 221; am. 2014, ch. 190, § 2, p. 506.

STATUTORY NOTES

Cross References.
Court technology fund, § 1-1623.

Amendments.
The 2014 amendment, by ch. 190, added the subsection designations; in present subsection (3), substituted "thirty-three dollars ($33.00)" for "thirteen dollars ($13.00)" in the first sentence and added "and twenty dollars ($20.00) shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the court technology fund" at the end.

1-2311. Appeal to lawyer magistrate. — If either party is dissatisfied he may, within thirty (30) days from the entry of said judgment against him, appeal to a lawyer magistrate other than the magistrate who entered said judgment; and if the final judgment is rendered against him by such lawyer magistrate, then he shall pay, in addition to any judgment rendered in the magistrate's division, an attorney's fee to the prevailing party in the sum of

twenty-five dollars ($25.00), provided, however, that appeals from such small claims department shall only be allowed in such cases as appeals would be allowed if the action were instituted in the magistrate's division as is now provided, and further provided that the appeal shall be heard in the county wherein the original small claim was filed. A fee of twenty dollars ($20.00) shall be paid by the party taking the appeal, which shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the court technology fund.

History.
1969, ch. 103, § 11, p. 348; am. 1985, ch. 167, § 1, p. 443; am. 2014, ch. 190, § 3, p. 506.

STATUTORY NOTES

Cross References.
Court technology fund, § 1-1623.

Amendments.
The 2014 amendment, by ch. 190, added the last sentence in the section.

CHAPTER 24

COURT OF APPEALS

1-2404. Number of judges — Qualifications — Conduct and discipline — Term — Selection — Election — Compensation. — (1) The court of appeals shall consist of four (4) judges, and shall sit in panels of not less than three (3) judges each.

(2) No person shall be appointed or elected to the office of judge of the court of appeals unless he has attained the age of thirty (30) years at the time of his appointment or election, is a citizen of the United States, shall have been admitted to the practice of law for at least ten (10) years prior to taking office, and is admitted to practice law in the state of Idaho, and has resided within this state two (2) years next preceding his appointment or election.

(3) A judge of the court of appeals shall be governed by the code of judicial conduct as promulgated by the Idaho supreme court, and shall be subject to removal, discipline, or retirement pursuant to section 1-2103, Idaho Code.

(4)(a) Judges of the court of appeals shall be appointed by the governor effective the first Monday of January, 1982, for the following initial terms: one (1) judge shall be appointed for a term to expire on the first Monday of January, 1985, one (1) judge shall be appointed for a term expiring two (2) years later, and one (1) judge shall be appointed for a term expiring two

(2) further years later. Thereafter, the term of office of a judge of the court of appeals shall be six (6) years.

(b) Vacancies in the office of judge of the court of appeals shall be filled in the same manner as vacancies in the office of supreme court justice or district judge.

(c) The positions of judges of the Idaho court of appeals shall first be filled as vacancies. The judicial council shall submit to the governor its recommendations for the offices at the earliest practicable time after the effective date of this act. The governor may make the appointment at any time thereafter, to be effective the first Monday of January, 1982, for the terms set forth in section 1-2404(4)(a), Idaho Code.

(d) In making its nominations for the initial vacancies to be created by this act, the Idaho judicial council shall submit the names of not less than six (6) nor more than nine (9) qualified persons for the initial three (3) vacancies to be created by this act. Otherwise, the judicial council shall submit the names of not less than two (2) nor more than four (4) persons for each vacancy. The governor shall appoint the judges, identifying each appointment by the length of the term of appointment.

(e) Nominations and appointments to fill initial or subsequent vacancies shall be made with due regard for balanced geographical membership of the court of appeals.

(f) Subsequent terms of office of a judge who has been appointed to the court of appeals shall be subject to a statewide nonpartisan election to be held in the primary election next preceding the expiration of an appointed term in the same method and manner as a justice of the supreme court.

(g) A fourth judge of the court of appeals shall be appointed by the governor effective the first Monday of January, 2009, for an initial term to expire on the first Monday of January, 2013. Thereafter, the term of office for this position shall be six (6) years. The judicial council shall submit the names of not less than two (2) nor more than four (4) persons for the initial vacancy in this position under the procedure set forth in section 1-2102, Idaho Code. This position shall be subject to all of the provisions relating to qualifications, removal, discipline, retirement, filling of vacancies, election and compensation set forth in this chapter.

(5) Judges of the court of appeals, except for judges who have made an election to remain in the public employee retirement system of Idaho pursuant to section 1-2011, Idaho Code, shall receive compensation upon retirement as provided in chapter 20, title 1, Idaho Code.

History.

I.C., § 1-2404, as added by 1980, ch. 245, § 1, p. 565; am. 1981, ch. 271, § 1, p. 572; am. 1985, ch. 29, § 5, p. 52; am. 1998, ch. 126, § 4, p. 466; am. 2008, ch. 24, § 1, p. 36; am. 2014, ch. 291, § 4, p. 734.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 291, deleted "shall receive an annual salary in an amount of one thousand dollars ($1,000) less than the annual salary of a supreme court justice and" following "court of appeals" in subsection (5).

1-2406. Jurisdiction — Assignment and revocation of assignment of cases — Authority in furtherance of jurisdiction.

JUDICIAL DECISIONS

Augmentation of Record.

The court of appeals will not address the issue of a denied motion to augment the record made before the supreme court, absent some basis for renewing the motion. This may occur via a renewed motion, with new evidence to support it, filed with the court of appeals or the presentation of refined, clarified, or expanded issues on appeal that demonstrates the need for additional records or transcripts, in effect renewing the motion. State v. Cornelison, 154 Idaho 793, 302 P.3d 1066 (Ct. App. 2013).

1-2408. Chief judge. — The chief justice of the supreme court shall appoint a chief judge of the court of appeals for a term of two (2) years or such shorter period as may be determined by the chief justice. The chief judge shall exercise such administrative powers as may be delegated by the full membership of the court of appeals, not in conflict with supreme court rules. The chief judge shall receive an annual salary in an amount of two thousand dollars ($2,000) greater than the annual salary of a judge of the court of appeals to compensate for the additional duties of the office.

History.

I.C., § 1-2408, as added by 1980, ch. 245, § 1, p. 565; am. 1981, ch. 271, § 3, p. 572; am. 2014, ch. 291, § 5, p. 734.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 291, added the last sentence in the section.

TITLE 2

JURIES AND JURORS

CHAPTER 2

JURY SELECTION AND SERVICE

2-208. Names randomly drawn from master jury list — Qualification questionnaire forms for prospective jurors — Mailing and return — Order to appear — Criminal contempt — Penalty for misrepresentation. — (1) The court or any other state or county official having authority to conduct a trial or hearing with a jury within the county may direct the jury commission to draw and assign to that court or official the number of qualified jurors deemed necessary for one (1) or more jury panels or as required by law for a grand jury. Upon receipt of the direction and in a manner prescribed by the court, the jury commission shall publicly draw at random, by use of a manual, mechanical, or automated system, from the master jury list the number of prospective jurors specified. Neither the names drawn nor the list shall be disclosed to any person except upon specific order of the presiding judge.

(2) Each person on the prospective jury panel shall be served with a summons, issued by the clerk of the court or the jury commissioner. The summons shall be served either personally, or by regular mail or certified mail, addressed to the prospective juror at that person's usual residence, business or post office address.

(3) The clerk or the jury commissioner shall mail a qualification questionnaire form, accompanied by instructions, addressed to the prospective jurors at their usual residence, business or post office address. The qualification questionnaire form may be sent together with the summons in a single mailing to a prospective juror. The qualification questionnaire form shall be in a form prescribed by the supreme court. The qualification questionnaire form must be completed and returned to the clerk or the jury commissioner within ten (10) days from the date of mailing. The qualification questionnaire form shall elicit the name, address of residence, and age of the prospective juror and whether the prospective juror: (a) is a citizen of the United States of America and a resident of the county, (b) is able to read, speak and understand the English language, (c) has any disability impairing his capacity to render satisfactory jury service, and (d) has lost the right

to serve on a jury because of a felony criminal conviction as provided by section 3, article VI, of the constitution of the state of Idaho, and who has not been restored to the rights of citizenship pursuant to section 18-310, Idaho Code, or other applicable law. The qualification questionnaire form shall contain the prospective juror's declaration that his responses are true to the best of his knowledge and his acknowledgment that a willful misrepresentation of a material fact may be punished as a misdemeanor. Notarization of the completed qualification questionnaire form shall not be required. If the prospective juror is unable to complete the form, another person may do so on his or her behalf and shall indicate that such person has done so and the reason therefor. If it appears there is an omission, ambiguity, or error in a returned form, the clerk or the jury commissioner shall again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the jury commission within ten (10) days after its second mailing.

(4) Any prospective juror who fails to return a completed qualification questionnaire form as instructed shall be directed by the jury commission to appear forthwith before the clerk or the jury commissioner to complete the qualification questionnaire form. At the time of his appearance for jury service, or at the time of interview before the court, clerk, or the jury commissioner, any prospective juror may be required to complete another qualification questionnaire form in the presence of the court, clerk, or the jury commissioner, at which time the prospective juror may be questioned, but only with regard to his responses to questions contained on the form and grounds for his excuse or disqualification. Any information thus acquired by the court, clerk, or the jury commissioner shall be noted on the qualification questionnaire form.

(5) A prospective juror who fails to appear as directed by the commission, pursuant to subsection (4) of this section shall be ordered by the court to appear and show cause for his failure to appear as directed. A prospective juror who fails to appear pursuant to the court's order may be subject to contempt proceedings under chapter 6, title 7, Idaho Code, and applicable rules of the supreme court, and the prospective juror's service may be postponed to a new prospective jury panel as set by the presiding judge.

(6) Any person who willfully misrepresents a material fact on a qualification questionnaire form for the purpose of avoiding or securing service as a juror is guilty of a misdemeanor.

(7) The contents of the juror qualification questionnaire form shall be confidential to the extent provided by rules of the Idaho supreme court.

(8) The clerk or the jury commissioner may provide an opportunity to a prospective juror to complete and return the qualification questionnaire form through electronic mail, facsimile transmission, or other reliable means of communication prior to mailing the qualification questionnaire form to the prospective juror. If the prospective juror completes and returns the qualification questionnaire form in such manner, the qualification questionnaire form need not be mailed to the prospective juror.

History.
1971, ch. 169, § 7, p. 799; am. 1974, ch. 26, § 8, p. 804; am. 2002, ch. 94, § 3, p. 256; am. 2003, ch. 116, § 1, p. 359; am. 2005, ch. 190, § 5, p. 583; am. 2013, ch. 207, § 1, p. 494.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 207, in subsection (5), updated the reference in the first sentence and rewrote the last sentence, which formerly read: "If the prospective juror fails to appear pursuant to the court's order or fails to show good cause for his failure to appear as directed by the jury commission, he is guilty of contempt and upon conviction may be fined not more than three hundred dollars ($300) or imprisoned not more than three (3) days, or both, and postponed to a new prospective jury panel as set by the presiding judge".

2-213. Stay of proceedings or quashing indictment for irregularity in selecting jury — Evidence in support of motion — Remedies exclusive — Contents of records not to be disclosed.

JUDICIAL DECISIONS

Applicability.
Employers' claim against the manager of the state insurance fund (SIF) for failure to distribute a dividend to policyholders under § 72-915 was grounded in contract, not statute, and, therefore, the five-year statute of limitation in § 5-216 applied; it was the contract, and its breach by the SIF, that allowed the employers and their class to bring the action. Farber v. Idaho State Ins. Fund, 152 Idaho 495, 272 P.3d 467 (2012).

2-215. Mileage and per diem of jurors. — A juror shall be paid mileage for his travel expenses from his residence to the place of holding court and return at the same rate per mile as established by resolution of the county commissioners for county employees in the county where the juror resides, and shall be compensated at the following rate, to be paid from the county treasury:

(1) Five dollars ($5.00), or a rate of more than five dollars ($5.00) up to twenty-five dollars ($25.00) as determined by the county commissioners of the county where the juror resides, for each one-half (1/2) day, or portion thereof, unless the juror travels more than thirty (30) miles from his residence in which event he shall receive ten dollars ($10.00), or a rate of more than ten dollars ($10.00) up to fifty dollars ($50.00) as determined by the county commissioners of the county where the juror resides, for each one-half (1/2) day or portion thereof;

(2) Ten dollars ($10.00), or a rate of more than ten dollars ($10.00) up to fifty dollars ($50.00) as determined by the county commissioners in the county where the juror resides, for each day's required attendance at court of more than one-half (1/2) day.

History.
1971, ch. 169, § 14, p. 799; am. 1982, ch. 213, § 1, p. 587; am. 2013, ch. 66, § 1, p. 161.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 66, in subsection (1) added "or a rate of more than five dollars ($5.00) up to twenty-five dollars ($25.00) as determined by the county commissioners of the county where the juror resides" and "or a rate of more than ten dollars ($10.00) up to fifty dollars ($50.00) as determined by the county commissioners of the county where the juror resides"; and added "or a rate of more than ten dollars ($10.00) up to fifty dollars ($50.00) as determined by the county commissioners in the county where the juror resides" in subsection (2).

TITLE 3

ATTORNEYS AND COUNSELORS AT LAW

CHAPTER 1

ADMISSION TO PRACTICE

3-104. Practicing without license a contempt — Exception.

RESEARCH REFERENCES

A.L.R. — Drafting of will or other estate-planning activities as illegal or unauthorized practice of law. 25 A.L.R.6th 323.

Matters constituting unauthorized practice of law in bankruptcy proceedings. 32 A.L.R.6th 531.

Unauthorized practice of law as contempt. 40 A.L.R.6th 463.

CHAPTER 2

RIGHTS AND DUTIES OF ATTORNEYS

3-205. Attorneys' fees — Lien.

JUDICIAL DECISIONS

Analysis

Filing of claim.
Worker's compensation.

Filing of Claim.

Even if an attorney's appeal of the denial of a motion to perfect an attorney's lien was not dismissed due to lack of standing, the attorney still would not prevail on the merits; the attorney had not commenced an action or filed a counterclaim. Kinghorn v. Clay, 153 Idaho 462, 283 P.3d 779 (2012).

Worker's Compensation.

This section did not limit the authority of the Idaho industrial commission to adopt an administrative rule, IDAPA 17.02.08.033, to regulate the amount of reasonable attorney fees that are to be paid in workers' compensation cases, and the adoption of that administrative rule did not, in effect, repeal this section. Seiniger Law Offices, P.A. v. State Ex Rel. Indus. Comm'n, 154 Idaho 461, 299 P.3d 773 (2013).

RESEARCH REFERENCES

A.L.R. — Validity and enforceability of express fee — Splitting agreements between attorneys. 11 A.L.R.6th 587.

Court rules and rules of professional conduct limiting amount of contingent fees or otherwise imposing conditions on contingent fee contracts. 49 A.L.R.6th 505.

CHAPTER 3

DISBARMENT

3-301. Grounds.

RESEARCH REFERENCES

A.L.R. — Propriety of radio and television attorney advertisements. 20 A.L.R.6th 385.
Disciplining attorney for abuse or misuse of computer technology, including internet and e-mail activities. 46 A.L.R.6th 365.

CHAPTER 4

BOARD OF COMMISSIONERS OF THE IDAHO STATE BAR

SECTION.

3-401. Purpose of chapter.

RESEARCH REFERENCES

A.L.R. — Reciprocal discipline of attorneys — Commingling or other mishandling of client funds. 45 A.L.R.6th 175.

3-409. License fees and appropriations. — (1) Every person practicing, or holding himself out as practicing law within this state, or holding himself out to the public as a person qualified to practice or carry on the calling of a lawyer within this state, except state and United States judges of the courts of record within this state, shall, prior to so doing and no later than February 1 of each year pay to the board of commissioners of the Idaho state bar a license fee as provided in this section.

(2) For the year 2011, license fees shall be in the following amounts:

(a) Active members and house counsel:

(i) For the calendar year of admission to the practice of law in the state of Idaho if admitted prior to July 1: one hundred fifty-five dollars ($155);

(ii) For the calendar year of admission to the practice of law in the state of Idaho if admitted after July 1: one hundred dollars ($100);

(iii) Each year for the next three (3) calendar years following the calendar year of admission: two hundred eighty-five dollars ($285);

(iv) Each year after the third full year of admission: three hundred eighty dollars ($380);

(v) Each year following the calendar year of the lawyer's seventy-second birthday: sixty dollars ($60.00).

(b) Affiliate and emeritus members:

(i) For each calendar year: one hundred thirty-five dollars ($135);

(ii) Each year following the calendar year of the lawyer's seventy-second birthday: sixty dollars ($60.00).

(3) For the year 2012 and each year thereafter, license fees shall be in the following amounts:

(a) Active members and house counsel:

(i) For the calendar year of admission to the practice of law in the state of Idaho if admitted prior to July 1: one hundred seventy-five dollars ($175);

(ii) For the calendar year of admission to the practice of law in the state of Idaho if admitted after July 1: one hundred fifteen dollars ($115);

(iii) Each year for the next three (3) calendar years following the calendar year of admission: three hundred twenty dollars ($320);

(iv) Each year after the third full year of admission: four hundred twenty-five dollars ($425);

(v) Each year following the calendar year of the lawyer's seventy-second birthday: seventy dollars ($70.00).

(b) Inactive and emeritus members:

(i) For each calendar year: one hundred fifty dollars ($150);

(ii) Each year following the calendar year of the lawyer's seventy-second birthday: seventy dollars ($70.00).

(c) Senior members: for each calendar year, seventy dollars ($70.00).

(4) The moneys thus collected, together with other revenues shall be administered under the direction of the board of commissioners of the Idaho state bar for the purpose of administering the Idaho state bar, encouraging local bar associations, promoting legal education seminars, fostering relations between the public and the bar and for the purpose of establishing and maintaining a clients' assistance fund which shall be administered by the Idaho state bar commissioners under rules approved by the supreme court, provided that the clients' assistance fund shall be funded by assessment of the members of the Idaho state bar not to exceed twenty dollars ($20.00) per member per year, independent of the license fee. All moneys received and expended by the commissioners of the Idaho state bar shall be audited annually by a certified public accountant.

History.

1923, ch. 211, § 9, as added by 1925, ch. 90, § 1, p. 128; I.C.A., § 3-409; am. 1939, ch. 48, § 1, p. 89; am. 1945, ch. 50, § 1, p. 65; am. 1951, ch. 59, § 1, p. 87; am. 1955, ch. 48, p. 65; am. 1963, ch. 47, § 1, p. 198; am. 1969, ch. 245, § 1, p. 770; am. 1970, ch. 117, § 1, p. 279; am. 1975, ch. 257, § 1, p. 702; am. 1976, ch. 143, § 1, p. 528; am. 1981, ch. 232, § 1, p. 471; am. 1985, ch. 190, § 1, p. 489; am. 1989, ch. 78, § 1, p. 139; am. 1998, ch. 66, § 1, p. 259; am. 2002, ch. 138, § 1, p. 390; am. 2003, ch. 118, § 1, p. 361; am. 2010, ch. 40, § 1, p. 70; am. 2012, ch. 81, § 1, p. 232.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 81, in subsection (3), substituted "inactive" for "affiliate" in the introductory paragraph in paragraph (b) and added paragraph (c).

3-420. Unlawful practice of law — Penalty.

JUDICIAL DECISIONS

Illegal Practice of Law.

Individual who knowingly and willfully violated orders prohibiting her from filing bankruptcy cases for her corporate entities for one year without first obtaining court permission, and without filing complete schedules with the petitions, was enjoined from signing or otherwise causing the filing of any bankruptcy petition in any bankruptcy court on behalf of any person or entity other than herself. Accordingly, she violated this section when she filed three more cases on behalf of her entities contrary to those orders, and personally signed petitions in two of those cases despite the fact that she was not an attorney. In re Rencher/Arcadia Apts., LLC, — Bankr. —, 2013 Bankr. LEXIS 1065 (Bankr. D. Idaho Feb. 27, 2013).

RESEARCH REFERENCES

A.L.R. — Drafting of will or other estate-planning activities as illegal or unauthorized practice of law. 25 A.L.R.6th 323.

Matters constituting unauthorized practice of law in bankruptcy proceedings. 32 A.L.R.6th 531.

TITLE 5

PROCEEDINGS IN CIVIL ACTIONS IN COURTS OF RECORD

CHAPTER 2

LIMITATION OF ACTIONS

5-201. Limitations in general.

RESEARCH REFERENCES

A.L.R. — Validity, and applicability to causes of action, of statute shortening limitation period or period of repose. 76 A.L.R.6th 31.

5-203. Action to recover realty.

JUDICIAL DECISIONS

Easements.

In order to establish an easement by prescription, a claimant must prove by clear and convincing evidence use of the subject property that is (1) open and notorious, (2) continuous and uninterrupted, (3) adverse and under a claim of right, (4) with the actual or imputed knowledge of the owner of the servient tenement (5) for the statutory period of five (now twenty) years. Capstar Radio Operating Co. v. Lawrence, 153 Idaho 411, 283 P.3d 728 (2012).

5-207. Possession under written claim of title.

JUDICIAL DECISIONS

Analysis

Highway access.
Payment of taxes.

Highway Access.

The well-established elements that a party must establish by clear and satisfactory evidence in order to establish adverse possession upon a written claim of title are: (1) that they entered into possession, as that term is defined by § 5-208, of the disputed property; (2) under a claim of title; (3) exclusive of other right; (4) that there has been a continuous occupation and possession of the disputed property described in the written instrument; (5) that they have so held the property for the statutory period 3; and (6) that they have paid all taxes, state, county or municipal, which have been levied and assessed upon such land according to law. Kennedy v. Schneider, 151 Idaho 440, 259 P.3d 586 (2011).

Payment of Taxes.

Where county's assessment methodology made it impossible to produce conclusive evidence that an adverse claimant had paid taxes on a disputed parcel of land, title cannot be quieted in the claimant. Kennedy v.

Schneider, 151 Idaho 440, 259 P.3d 586 (2011).

5-210. Oral claim — Possession defined — Payment of taxes.

JUDICIAL DECISIONS

Payment of Taxes.

Where county's assessment methodology made it impossible to produce conclusive evidence that an adverse claimant had paid taxes on a disputed parcel of land, title cannot be quieted in the claimant. Kennedy v. Schneider, 151 Idaho 440, 259 P.3d 586 (2011).

5-215. Action on judgment or for mesne profits of real property.

JUDICIAL DECISIONS

Foreign Actions.

This section applies only to an action upon a judgment, requiring a judgment creditor to file a completely new case. An Enforcement of Foreign Judgments Act (EFJA) filing does not involve initiating a new case, rather, the foreign judgment is treated in the same manner as an Idaho judgment by the clerk of the court in which the judgment is filed, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as an Idaho judgment, and may be enforced or satisfied in like manner as an Idaho judgment. Grazer v. Jones, 154 Idaho 58, 294 P.3d 184 (2013).

5-216. Action on written contract.

JUDICIAL DECISIONS

Analysis

Application.
When period begins to run.

Application.

Employers' claim against the manager of the state insurance fund (SIF) for failure to distribute a dividend to policyholders under § 72-915 was grounded in contract, not statute, and, therefore, the five-year statute of limitation in this section applied; it was the contract, and its breach by the SIF, that allowed the employers and their class to bring the action. Farber v. Idaho State Ins. Fund, 152 Idaho 495, 272 P.3d 467 (2012).

When Period Begins to Run.

Because the five-year statute of limitations did not begin to run against buyers of farmland while the buyers were in uninterrupted possession, the buyers were not barred from asserting a claim for specific performance as to land they possessed in accordance with the terms of a land exchange agreement they had made with the sellers more than five years earlier. Peterson v. Gentillon, 154 Idaho 184, 296 P.3d 390 (2013).

5-217. Action on oral contract.

JUDICIAL DECISIONS

Commencement of Running of Statute.

Trial court did not err in holding that a property owner's breach of contract claim against a well-drilling company was barred by the statute because the four-year limitations period began to run in August 2006 when construction of a well on the owner's property was completed; hence, the owner's April 6, 2011 action was untimely. Stapleton v. Jack Cushman Drilling, 153 Idaho 735, 291 P.3d 418 (2012).

5-218. Statutory liabilities, trespass, trover, replevin, and fraud.

JUDICIAL DECISIONS

ANALYSIS

Applicability.
Application in general.
Fraud.

Applicability.

Where a former client's disability checks were alleged to have been cashed and spent by the law firm which received the checks, the cause of action was not subject to the statute of limitations for legal malpractice under § 5-219(4) or the statute of limitations for fraud under subsection (4) of this section. It was an action for conversion under § 28-3-118(7); however, under any of these sections, the limitations period ran before plaintiff filed suit. McCormack v. Caldwell, 152 Idaho 15, 266 P.3d 490 (Ct. App. 2011).

Application in General.

An individuals with disabilities education act claim for attorneys' fees is most analogous to an independent action predicated on statutory liability, which is governed by a three year limitation in this section; accordingly, since parents' attorneys' fees claim was filed less than three years after a hearing officer issued his decision, it was timely. Meridian Joint Sch. Dist. No. 2 v. D.A., 2013 U.S. Dist. LEXIS 90683 (D. Idaho June 25, 2013).

Fraud.

Where fraud was alleged as an affirmative defense and the court was not provided with records the purchaser actually reviewed such that the court could analyze the records and determine whether they would have disclosed the falsity of the alleged misrepresentations, the date from which the statute of limitations should run could not be conclusively determined. Golden West Holdings, LLC v. BBT Holdings, LLC, 2010 U.S. Dist. LEXIS 123819 (D. Idaho 2010).

In an action against the Boy Scouts of America, and an affiliated church, arising from the alleged molestation of a boy scout by a troop leader during the late 1960's, the three-year fraud statute of limitations under subsection (4) of this section, rather than the two-year personal injury statute of limitations under § 5-219(4), applied to the former boy scout's claim of institutional fraud by omission; the former boy scout specifically alleged fraud and assumed the heavy duty of proving an intentional tort by clear and convincing evidence. Doe v. Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, 2011 U.S. Dist. LEXIS 87290 (D. Idaho 2011).

Chapter 7 debtor had to repay $48,980 which she received from a public housing authority after she rented one half of a duplex to her son and daughter-in-law, even though her son and daughter-in-law were eligible to receive Section 8 housing assistance, because she falsely stated that she was not related to her son and daughter-in-law when she signed several documents the authority used to approve her application. The action was not time-barred under subsection (4) because the authority did not learn that the debtor and her tenants were related until 2009. Boise City/Ada County Housing Auth. v. O'Brien (In re O'Brien), 2011 Bankr. LEXIS 3082 (Bankr. D. Idaho Aug. 10, 2011).

5-219. Actions against officers, for penalties, on bonds, and for professional malpractice or for personal injuries.

JUDICIAL DECISIONS

ANALYSIS

Accrual of action.
Applicability.
Malpractice actions.
—Foreign objects.
—Fraud and deceit.
—Occurrence of damage.
Wrongful death actions.

Accrual of Action.

Chapter 7 trustee's adversary proceeding alleging that a notary public and the notary's employer were liable under § 51-118 for damages the notary caused when she notarized the forged signature of a debtor on a deed of trust was not time-barred, even though the trustee filed his adversary proceeding on March 25, 2009, more than three years after the notary notarized the debtor's signature. Subsection (4) of this section gave the debtor two years from the date he discovered the notary's misconduct to file a lawsuit. The debtor discovered the notary's conduct in May 2006, and declared bankruptcy on March 28, 2008. 11 U.S.C.S. § 108 extended the period the trustee had to file his adversary proceeding until March 28, 2010. Gugino v. Alliance Title & Escrow Corp. (In re Ganier), 2010 Bankr. LEXIS 1444 (Bankr. D. Idaho 2010).

Applicability.

Where a former client's disability checks were alleged to have been cashed and spent by the law firm which received the checks, the cause of action was not subject to the statute of limitations for legal malpractice under subsection (4) of this section or the statute of limitations for fraud under § 5-218(4). It was an action for conversion under § 28-3-118(7); however, under any of these sections, the limitations period ran before plaintiff filed suit. McCormack v. Caldwell, 152 Idaho 15, 266 P.3d 490 (Ct. App. 2011).

Malpractice Actions.

Where the seller in a real estate transaction refused to return their earnest money, allegedly based on unclear language drafted by the buyer's attorneys, the buyer's cause of action for professional negligence against the attorneys was barred; some damage occurred more than two years prior to the commencement of the action. Reynolds v. Trout Jones Gledhill Fuhrman, P.A., 154 Idaho 21, 293 P.3d 645 (2013).

—Foreign Objects.

Because a permanent plate installed during spinal surgery was intentionally placed in the patient's body for the purpose of medical treatment, it was not a foreign object, and the foreign object exception to this rule was not applicable. Stuard v. Jorgenson, 150 Idaho 701, 249 P.3d 1156 (2011).

—Fraud and Deceit.

In an action against the Boy Scouts of America, and an affiliated church arising from the alleged molestation of a boy scout by a troop leader during the late 1960's, the three-year fraud statute of limitations under § 5-218(4), rather than the two-year personal injury statute of limitations under subsection (4) of this section, applied to the former boy scout's claim of institutional fraud by omission; the former boy scout specifically alleged fraud and assumed the heavy duty of proving an intentional tort by clear and convincing evidence. Doe v. Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, 2011 U.S. Dist. LEXIS 87290 (D. Idaho 2011).

—Occurrence of Damage.

Because any injuries resulting from a surgery performed in the wrong location were objectively ascertainable at that time and would have been discovered if a more thorough examination had been performed, a medical malpractice suit was time-barred, although the patient's symptoms subsided after the surgery and he had no knowledge of any negligence. Stuard v. Jorgenson, 150 Idaho 701, 249 P.3d 1156 (2011).

Wrongful Death Actions.

The statute of limitations on the decedent's own cause of action is irrelevant when ascertaining the timeliness of his heirs' wrongful death action. As the actionable wrong for a wrongful death action is not complete until the death of the decedent, the statute of limitations does not begin running until that time. Castorena v. GE, 149 Idaho 609, 238 P.3d 209 (2010).

RESEARCH REFERENCES

A.L.R. — When statute of limitations begins to run on action against attorney for malpractice based upon negligence — View that statute begins to run from time of occurrence of negligent act or omission. 11 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence — View that statute begins to run from time of occurrence of sustaining damage or injury and other theories. 12 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence — View that statute begins to run from time client discovers, or should have discovered, negligent act or omission — Statement of rule and application of rule to providing client with allegedly negligent advice or failing to advise. 13 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence — View that statute begins to run from time client discovers, or should have discovered, negligent act or omis-

sion — Application of rule to conduct of litigation and delay or inaction in conducting client's affairs. 14 A.L.R.6th 1.

Timeliness of action under medical malpractice statute of repose, aside from effect of fraudulent concealment of patient's cause of action. 14 A.L.R.6th 301.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence — View that statute begins to run from time client discovers, or should have discovered, negligent act or omission — Application of rule to property, estate, corporate, and document cases. 15 A.L.R.6th 427.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence — View that statute begins to run from time client discovers, or should have discovered, negligent act or omission — Application of rule to negligent misrepresentation, failure to supervise junior counsel, conflict of interest, billing disputes, and unspecified acts of negligence. 16 A.L.R.6th 653.

When statute of limitations begins to run in case of dental malpractice. 17 A.L.R.6th 159.

Effect of fraudulent or negligent concealment of patient's cause of action on timeliness of action under medical malpractice statute of repose. 19 A.L.R.6th 475.

5-224. Actions for other relief.

JUDICIAL DECISIONS

ANALYSIS

Negligence.
Standing.

Negligence.

A property owner's 2011 negligence claim against a well-drilling company was barred by the four-year limitations period; there was no evidence that an act of negligence caused damage until the well caved in, which occurred in 2010. Stapleton v. Jack Cushman Drilling, 153 Idaho 735, 291 P.3d 418 (2012).

Standing.

Under this section, the plaintiffs had no standing to bring an action; the public use and maintenance of the road from 1979 onward was not disputed, so the four-year time period to bring an action ended before the current plaintiffs acquired the property. Halvorson v. N. Latah County Highway Dist., 151 Idaho 196, 254 P.3d 497, cert. denied, — U.S. —, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

5-230. Persons under disabilities — Other than for real property.

RESEARCH REFERENCES

A.L.R. — When is person, other than one claiming posttraumatic stress syndrome or memory repression, within coverage of statutory provision tolling running of limitations period on basis of mental disability. 23 A.L.R.6th 697.

5-238. Acknowledgment or new promise — Effect on operation of statute — Effect of partial payment.

JUDICIAL DECISIONS

Effect Upon Limitation Period.

Where defendant/debtor executed an agreement at the time of his parole, which acknowledged the fine/debt from his original sentencing four years previous and a collection agency files suit on that debt less than three years after the acknowledgement, the agency's action was not barred. Collection Bureau, Inc. v. Dorsey, 150 Idaho 695, 249 P.3d 1150 (2011).

5-239. Actions barred in another state.

RESEARCH REFERENCES

Idaho Law Review. — Choice of Law in Idaho: A Survey and Critique of Idaho Cases, Andrew S. Jorgensen. 49 Idaho L. Rev. 547 (2013).

5-241. Accrual of actions arising out of the design or construction of improvement to real property.

JUDICIAL DECISIONS

Claims Untimely.

Under this section, a property owner's breach of contract claim against a well-drilling company was barred by the statute because the four-year limitations period began to run in August 2006 when construction of a well on the owner's property was completed; hence, the owner's April 6, 2011 action was untimely. Stapleton v. Jack Cushman Drilling, 153 Idaho 735, 291 P.3d 418 (2012).

5-245. Actions to collect child support arrearages. — An action or proceeding to collect child support arrearages, arising under an Idaho child support order, can be commenced at any time prior to the expiration of the resulting judgment or any renewal thereof. An action or proceeding under this section shall include, but is not limited to, execution on the judgment, order to show cause, garnishment, income withholding, income tax offset or lottery prize offset.

History.

I.C., § 5-245, as added by 1988, ch. 199, § 1, p. 378; am. 1995, ch. 264, § 1, p. 846; am. 1996, ch. 56, § 1, p. 167; am. 2011, ch. 104, § 1, p. 267.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 104, rewrote the first sentence, which read: "An action or proceeding to collect child support arrearages must be commenced within five (5) years after the child reaches the age of majority or within five (5) years after the child's death, if death occurs before the child reaches majority."

Compiler's Notes.

Section 4 of S.L. 2011, ch. 104 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 5 of S.L. 2011, ch. 104, as amended by S.L. 2011, ch. 331, § 1 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to July 1, 1995, and shall apply to all orders currently being enforced by the Idaho Department of Health and Welfare Child Support Program such that any Idaho judgment for child support that would otherwise have expired since July 1, 1995, may be renewed on or before December 30, 2011."

5-246. Prescriptive overflow easements.

JUDICIAL DECISIONS

Purpose Consistent With Ownership.

This section supplants the common law rule by allowing servient estate holders to use their property for any purpose otherwise consistent with their ownership of the property. Owners of property subject to a prescriptive overflow easement could place concrete and other materials below the reservoir easement,

although reservoir storage was reduced. Twin Lakes Canal Co. v. Choules, 151 Idaho 214, 254 P.3d 1210 (2011).

CHAPTER 3
PARTIES TO ACTIONS

5-306. Infants and insane persons — Guardians ad litem. — When an infant or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardian ad litem appointed by the court in which the action is pending in each case. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient, to represent the infant, insane or incompetent person in the action or proceeding, notwithstanding he may have a general guardian and may have appeared by him.

History.
C.C.P. 1881, § 187; R.S., R.C., & C.L., § 4095; C.S., § 6639; I.C.A., § 5-306; am. 2012, ch. 20, § 1, p. 66.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 20, deleted "or by a judge thereof, or a probate judge" from the end of the first sentence.

JUDICIAL DECISIONS

Cited in: Abolafia v. Reeves, 152 Idaho 898, 277 P.3d 345 (2012).

5-311. Suit for wrongful death by or against heirs or personal representatives — Damages.

JUDICIAL DECISIONS

ANALYSIS

Condition precedent.
Heirs.

Condition Precedent.
This section contains a condition precedent, but the condition precedent does not apply to the expiration of the statute of limitations as to the decedent's own claim. Castorena v. GE, 149 Idaho 609, 238 P.3d 209 (2010).

Heirs.
Because the decedent's own cause of action against an underinsured motorist abated upon her death, her personal representative, and heirs who were not insureds under the policy, were not entitled to payment for wrongful death, pursuant to her underinsured motorist coverage. Farm Bureau Mut. Ins. Co. v. Eisenman, 153 Idaho 549, 286 P.3d 185 (2012).

Cited in: Masuo v. Galan (In re Galan), 455 B.R. 214 (Bankr. D. Idaho 2011).

5-327. Personal injuries — Property damage — Death of wrongdoer — Death of injured party — Survival of action.

JUDICIAL DECISIONS

Cited in: Bishop v. Owens, 152 Idaho 617, 272 P.3d 1247 (2012).

5-337. Immunity for use of automated external defibrillator (AED). — (1) As used in this section, "defibrillator" means an automated external defibrillator (AED).

(2) In order to promote public health and safety:

(a) A person or entity who acquires a defibrillator shall ensure that:

(i) Expected defibrillator users receive training in its use and care equivalent to the CPR and AED training of the American heart association, the American red cross or similar entities;

(ii) The defibrillator is maintained and tested by the owner according to the manufacturer's operational guidelines;

(iii) Any person who renders emergency care or treatment to a person in cardiac arrest by using a defibrillator must activate the emergency medical services system as soon as possible, and must report any clinical use of the defibrillator to the prescribing physician.

(b) Any person or entity who acquires a defibrillator shall notify an agent of the emergency communications system or emergency vehicle dispatch center of the existence, location and type of defibrillator.

(3)(a) Any person who reasonably renders emergency care using a defibrillator, without remuneration or expectation of remuneration, at the scene of an accident or emergency to a victim of the accident or emergency shall not be liable for any civil damages resulting from the person's acts or omissions.

(b) No cause of action shall be maintained against a licensed physician, physician assistant, nurse practitioner, or nurse, or against an emergency medical technician, fireman, peace officer, ambulance attendant or other person trained to use a defibrillator, or against a person or entity who acquires or maintains a defibrillator which arises from the reasonable use of a defibrillator in an emergency setting and no cause of action shall be maintained against a physician who wrote a prescription for the defibrillator.

(c) This immunity from civil liability does not apply if the acts or omissions amount to gross negligence or willful or wanton or reckless misconduct.

(4) A defibrillator acquired pursuant to a prescription and possessed in compliance with subsection (2) of this section is exempt from the provisions of chapter 10, title 56, Idaho Code.

History.

I.C., § 5-337, as added by 1999, ch. 351, § 1, p. 937; am. 2004, ch. 129, § 1, p. 447; am. 2008, ch. 299, § 1, p. 836; am. 2010, ch. 344, § 1, p. 901; am. 2014, ch. 128, § 1, p. 361.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 128, deleted "which has been prescribed by a physician or osteopath licensed pursuant to chapter 18, title 54, Idaho Code" at the end of subsection (1); deleted "as a result of a prescription" following "defibrillator" in the introductory paragraph of paragraph (2)(a) and near the beginning of paragraph (2)(b); deleted former paragraph (2)(a)(iii), which read: "There is involvement of a licensed physician in the owner's program to ensure compliance with requirements for training, notification, maintenance and guidelines for use" and redesignated former paragraph (2)(a)(iv) as present (2)(a)(iii); in paragraph (3)(b), deleted "osteopath " following "licensed physician" near the beginning, substituted "a physician who wrote a prescription" for "the physician or osteopath who wrote the prescription", and deleted "if the prescription was written in good faith" from the end.

5-343. Immunity of colleges and universities allowing firearms. — No action shall lie or be maintained for civil damages in any court of this state against the board of regents of the university of Idaho, the boards of trustees of the state colleges and universities, a dormitory housing commission, the board of [for] professional-technical education or the boards of trustees of each of the community colleges established under chapter 21, title 33, Idaho Code, where the claim arises out of the policy of the board or commission to either specifically allow or not prohibit the lawful possession and storage of firearms on its property.

History.

I.C., § 5-343, as added by 2014, ch. 73, § 5, p. 189.

STATUTORY NOTES

Cross References.

Board of regents, § 33-2802.

Dormitory housing commissions, § 33-2118.

State board for professional-technical education, § 33-2202.

Legislative Intent.

Section 1 of S.L. 2014, ch. 1 provides: "Legislative Intent. The Legislature finds that uniform laws, regulations and policies regarding firearms and weapons on state college and university campuses are necessary for public safety. It is the intent of this Legislature to provide for the safety of students, faculty and staff of state colleges and universities to allow for the possession or carrying of firearms by certain licensed persons on state college and university campuses, with the exception of carrying within student dormitories and residence halls, and within public entertainment facilities, as defined."

Compiler's Notes.

The bracketed insertion near the middle of the section was added by the compiler to correct the name of the referenced agency.

CHAPTER 5

COMMENCEMENT OF ACTIONS

SECTION.

5-505. Lis pendens.

JUDICIAL DECISIONS

Purpose.

A lis pendens does not create a lien; it's purpose is simply to give notice of the pendency of a lawsuit affecting the title or the

right to possession of real property to subsequent purchasers or encumbrancers of the property who have not actual knowledge of the action or of the claim upon which it is based. Benz v. D. L. Evans Bank, 152 Idaho 215, 268 P.3d 1167 (2012).

Cited in: Berkshire Invs., LLC v. Taylor, 153 Idaho 73, 278 P.3d 943 (2012).

5-508. Service by publication — Affidavit. — When the person on whom the service is to be made resides outside of the state, or has departed from the state, or cannot after due diligence be found within the state, or conceals himself therein to avoid the service of summons, or is a foreign corporation having no managing or business agent, cashier or secretary within this state, or where any persons are made defendant by the style and description of unknown owners, or unknown heirs or unknown devisees of any deceased person and the names of such unknown owners or heirs or devisees are unknown to the complainant in the action, and such facts appear by affidavit to the satisfaction of the court in which the suit is pending, and it also appears by the affidavit or a verified complaint on file that a cause of action exists against the defendant in respect to whom the service is to be made, and that he is a necessary or proper party to the action, the court may make an order for the publication of the summons; and an affidavit setting forth in ordinary and concise language any of the grounds as above set forth, upon which the publication of the summons is sought, shall be sufficient without setting forth or showing what efforts have been made or what diligence has been exerted in attempting to find the defendant. Service upon any person, firm, company, association or corporation who is subject to the jurisdiction of the courts of this state pursuant to the provisions of section 5-514, Idaho Code, may be made in the manner provided in section 5-515, Idaho Code.

History.

C.C.P. 1881, § 221; R.S., § 4145; am. 1907, p. 319, § 2; reen. R.C., § 4145; am. 1909, p. 185, § 2; am. 1911, ch. 29, § 1, p. 65; reen. C.L., § 4145; C.S., § 6677; am. 1925, ch. 43, § 1, p. 60; am. 1927, ch. 93, § 4, p. 119; I.C.A., § 5-508; am. 1993, ch. 89, § 1, p. 217; am. 2011, ch. 26, § 1, p. 66; am. 2012, ch. 98, § 1, p. 263.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 26, deleted "or, if the address of the defendant outside of the state is known, may make an order that personal service of the summons may be made outside of the state in lieu of such publication" following "publication of the summons" near the end of the first sentence and added the last sentence.

The 2012 amendment, by ch. 98, inserted "affidavit or a" preceding "verified complaint" near the middle of the first sentence.

Effective Dates.

Section 2 of S.L. 2012, ch. 98 declared an emergency. Approved March 21, 2012.

5-514. Acts subjecting persons to jurisdiction of courts of state.

JUDICIAL DECISIONS

Cited in: Brannon v. City of Coeur d'Alene, 153 Idaho 843, 292 P.3d 234 (2012).

RESEARCH REFERENCES

A.L.R. — In personam jurisdiction, under long-arm statute, over nonresident attorney in legal malpractice action. 78 A.L.R.6th 151.

5-517. Service in other manner unaffected.

RESEARCH REFERENCES

A.L.R. — Service of process via computer or fax. 30 A.L.R.6th 413.

TITLE 6

ACTIONS IN PARTICULAR CASES

CHAPTER 1

FORECLOSURE OF MORTGAGES AND OTHER LIENS

6-101. Proceedings in foreclosure — Construction of section — Meaning of "action" — Effect of foreclosure on holder of unrecorded lien.

JUDICIAL DECISIONS

Unjust Enrichment.

Where the mortgagee was the purchaser at a foreclosure sale and the bid did not exceed the sums due to the mortgagee under this section, there was no surplus under § 6-102 from which the occupants could recover the cost of alleged improvements; thus, an unjust enrichment claim against the mortgagee was properly dismissed. Indian Springs L.L.C. v. Andersen, 154 Idaho 708, 302 P.3d 333 (2012).

6-102. Disposition of surplus money.

JUDICIAL DECISIONS

Unjust Enrichment.

Where the mortgagee was the purchaser at a foreclosure sale and the bid did not exceed the sums due to the mortgagee under § 6-101, there was no surplus under this section from which the occupants could recover the cost of alleged improvements; thus, an unjust enrichment claim against the mortgagee was properly dismissed. Indian Springs L.L.C. v. Andersen, 154 Idaho 708, 302 P.3d 333 (2012).

6-107. Certificates of sale.

JUDICIAL DECISIONS

Passage of Title.

Title to real property passes to a foreclosure sale purchaser, under §§ 11-309 and 11-310 and this section, when the purchaser receives the certificate of sale. Indian Springs L.L.C. v. Andersen, 154 Idaho 708, 302 P.3d 333 (2012).

CHAPTER 2

WASTE AND WILFUL TRESPASS ON REAL PROPERTY

SECTION.

6-202. Actions for trespass. — Any person who, without permission of the owner, or the owner's agent, willfully and intentionally enters upon the real property of another person which property is posted with "No Trespassing" signs or other notices of like meaning, spaced at intervals of not less than one (1) notice per six hundred sixty (660) feet along such real property; or who willfully and intentionally cuts down or carries off any wood or underwood, tree or timber, or girdles, or otherwise willfully and intentionally injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, village, or city lot, or cultivated grounds; or on the commons or public grounds of or in any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor or fifty dollars ($50.00), plus a reasonable attorney's fee which shall be taxed as costs, in any civil action brought to enforce the terms of this act if the plaintiff prevails.

History.
C.C.P. 1881, § 473; R.S., R.C., & C.L., § 4531; C.S., § 6958; I.C.A., § 9-202; am. 1976, ch. 155, § 1, p. 553; am. 2013, ch. 62, § 2, p. 138.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 62, inserted "willfully and intentionally" three times.

Legislative Intent.
Section 1 of S.L. 2013, ch. 62 provided: "Legislative Intent. The Legislature finds that generally, real and personal property damage caused by forest and range fire is measured by the diminution of fair market value of the real and personal property. In Idaho, restoration damages may be awarded if there is a reason personal to the owner for restoring the forest or range land to its original condition.

"The Legislature further finds that in other jurisdictions, large forest or range land owners have sought and have been awarded double recovery, the diminution of fair market value and restoration costs, for the damage to forest or range land caused by forest or range fires. The awards include intangible environmental damages that are clearly speculative in their nature, and should not be recoverable. This legislation clarifies that for real and personal property damage caused by forest or range fire, recovery is limited to reasonable suppression costs, economic damages and either the diminution of fair market value of the real and personal property, or the actual and tangible costs for restoration, not intangible environmental damages, as a result of the forest or range fire."

Compiler's Notes.
Section 4 of S.L. 2013, ch. 62 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act"

Effective Dates.
Section 5 of S.L. 2013, ch. 62 declared an emergency. Approved March 12, 2013.

JUDICIAL DECISIONS

Punitive Damages.

When appellant landowners committed timber trespass on respondent neighbors' property by entering the property and cutting down trees during the pendency of litigation involving a boundary dispute and an action to quiet title, appellants acted willfully and intentionally; therefore, this section's trebling of damages applied to the trespass claim. Weitz v. Green, 148 Idaho 851, 230 P.3d 743 (2010).

CHAPTER 3

FORCIBLE ENTRY AND UNLAWFUL DETAINER

6-303. Unlawful detainer defined.

JUDICIAL DECISIONS

Cited in: Maynard v. Nguyen, 152 Idaho 724, 274 P.3d 589 (2011).

6-324. Attorney fees.

JUDICIAL DECISIONS

Cited in: Kelley v. Yadon, 150 Idaho 334, 247 P.3d 199 (2011).

CHAPTER 5

PARTITION OF REAL ESTATE

6-501. When partition may be had.

JUDICIAL DECISIONS

Valuation.

Chapter 7 trustee was not permitted to partition co-owned property under this section, because a partition of the property, acreage that partially abutted the Snake River and only accessible from the river, was not practicable — the value of the ownership interests of all undivided interest holders being based on access to the river and the concomitant right to travel on the river free of the permitting restrictions otherwise applicable. Zimmerman v. Spickelmire (In re Spickelmire), 433 B.R. 792 (Bankr. D. Idaho 2010).

6-543. Sale of share of incapacitated or protected person — Payment of proceeds to guardian. — The guardian who may be entitled to the custody and management of the estate of an incapacitated or protected person whose interest in real property has been sold, may receive, in behalf of such person, his share of the proceeds of such real property from the referees [by a judge of the court, that he will faithfully discharge the

trust reposed in him, and will render a true and just account to the person entitled or to his legal representative].

History.
C.C.P. 1881, § 529; R.S., R.C., & C.L., § 4602; C.S., § 7018; I.C.A., § 9-543; am. 1971, ch. 111, § 10, p. 233; am. 2011, ch. 151, § 1, p. 414.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 151, substituted "incapacitated or protected person" for "insane person" in the section heading.

Compiler's Notes.
The brackets around the language at the end of the section were added by the compiler to indicate that that language was probably intended to be struck by the 1971 amendment of the section.

6-544. Partition without action — Consent of guardian. — The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an incapacitated or protected person, or other person adjudged incapable of conducting his own affairs, who is interested in the real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

History.
C.C.P. 1881, § 530; R.S., R.C., & C.L., § 4603; C.S., § 7019; I.C.A., § 9-544; am. 2011, ch. 151, § 2, p. 414.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 151, substituted "incapacitated or protected person" for "insane person" near the beginning of the section.

CHAPTER 6

USURPATION OF OFFICE OR FRANCHISE

6-606. Damages against usurper.

JUDICIAL DECISIONS

Cited in: City of Huetter v. Keene, 150 Idaho 13, 244 P.3d 157 (2010).

6-610. Actions against law enforcement officers.

JUDICIAL DECISIONS

ANALYSIS

Bond for costs.
Tort claim actions.

Bond for Costs.

Plaintiff did not file a bond under this section, but argued that defendants were estopped from raising the issue. The argument lacked merit because defendants raised the issue as an affirmative defense and filed motions to dismiss within the proper deadlines. Pauls v. Green, 816 F. Supp. 2d 961 (D. Idaho 2011).

Tort Claim Actions.

Sheriff was entitled to dismissal of a suit alleging breach of a settlement agreement and other causes of action because the filing of a bond one day after the lawsuit was initiated did not comply with the requirement that bond be posted as a condition precedent to suit. Allied Bail Bonds, Inc. v. County of Kootenai, 151 Idaho 405, 258 P.3d 340 (2011).

CHAPTER 7

LIBEL AND SLANDER

SECTION.

6-701. Defamatory statements uttered on radio and television broadcasts in behalf of candidates — Liability. — The owner, licensee, or operator of a visual or sound radio broadcasting station, or network of stations, or agents or employees of any such owner, licensee, or operator shall not be liable for any damages for any defamatory statement published or uttered in or as a part of any visual or sound radio broadcast by or on behalf of any candidate for public office; Provided, however, that this exemption from liability shall not apply to any owner, licensee, or operator, or agent or employee of any owner, licensee, or operator of such visual or sound radio broadcasting station, or network of stations, when such owner, licensee, or operator, or agent or employee of the owner, licensee, or operator of such visual or sound radio broadcasting station is a candidate for public office or speaking on behalf of a candidate for public office.

History.

1953, ch. 29, § 1, p. 49; am. 2011, ch. 151, § 3, p. 414.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 151, inserted "and television" in the section heading.

6-702. Uniform single publication act — One cause of action for libel or slander — Recovery.

RESEARCH REFERENCES

A.L.R. — Liability of newspaper for libel and slander — 21st century cases. 22 A.L.R.6th 553.

6-712. Retraction by newspaper, radio or television broadcasting station or network of stations — Limit of recovery.

RESEARCH REFERENCES

A.L.R. — Liability of newspaper for libel and slander — 21st century cases. 22 A.L.R.6th 553.

6-713. Privileged publication in newspaper defined.

RESEARCH REFERENCES

A.L.R. — Libel and slander: construction and application of the neutral reportage privilege. 13 A.L.R.6th 111.

Liability of newspaper for libel and slander — 21st century cases. 22 A.L.R.6th 553.

CHAPTER 8

ACTIONS FOR NEGLIGENCE

6-801. Comparative negligence or comparative responsibility — Effect of contributory negligence.

JUDICIAL DECISIONS

Landowner and Invitee.

Finding in favor of a baseball patron was proper because there was no error in the district court's refusal to limit the duty owed to spectators injured by foul balls by baseball stadium owners and operators; the Baseball Rule is not adopted in Idaho. Apart from express written and oral consent, assumption of the risk, whether primary or secondary, is not a valid defense in Idaho. Rountree v. Boise Baseball, LLC, 154 Idaho 167, 296 P.3d 373 (2013).

RESEARCH REFERENCES

A.L.R. — Construction and application of contact sports exception to negligence. 75 A.L.R.6th 109.

6-802. Verdict giving percentage of negligence or comparative responsibility attributable to each party.

RESEARCH REFERENCES

A.L.R. — Construction and application of contact sports exception to negligence. 75 A.L.R.6th 109.

CHAPTER 9

TORT CLAIMS AGAINST GOVERNMENTAL ENTITIES

6-901. Short title.

JUDICIAL DECISIONS

Cited in: Woodworth v. State, 154 Idaho 362, 298 P.3d 1066 (2013).

RESEARCH REFERENCES

A.L.R. — Common-law liability for injury caused by fireworks or firecracker. 21 A.L.R.6th 81.

6-902. Definitions.

JUDICIAL DECISIONS

School District.

When plaintiffs' school age son was injured after another student pushed him and hit him on the head, the Idaho Tort Claims Act applied to plaintiffs' claims against the school district because it was a governmental entity under this section. The evidence did not create a genuine issue of material fact as to whether the conduct of any school employee was reckless, willful, and wanton, because there was no evidence that the student who hit plaintiffs' son had ever harmed another student. Mareci v. Coeur d'Alene Sch. Dist. No. 271, 150 Idaho 740, 250 P.3d 791 (2011).

6-903. Liability of governmental entities — Defense of employees. — (1) Except as otherwise provided in this act, every governmental entity is subject to liability for money damages arising out of its negligent or otherwise wrongful acts or omissions and those of its employees acting within the course and scope of their employment or duties, whether arising out of a governmental or proprietary function, where the governmental entity if a private person or entity would be liable for money damages under the laws of the state of Idaho, provided that the governmental entity is subject to liability only for the pro rata share of the total damages awarded in favor of a claimant which is attributable to the negligent or otherwise wrongful acts or omissions of the governmental entity or its employees. When the claim for damages arises from construction, operation or maintenance of an impoundment, canal, lateral, drain or associated facilities that are under the supervision or control of the operating agency of irrigation districts whose board consists of directors of its member districts, then such board and its member districts shall be considered a single governmental unit and the claim may be brought and pursued only against the operating unit.

(2) (i) A governmental entity shall provide a defense to its employee, including a defense and indemnification against any claims brought against the employee in the employee's individual capacity when the claims are related to the course and scope of employment, and be responsible for the payment of any judgment on any claim or civil lawsuit against an employee for money damages arising out of any act or omission within the course and scope of his employment; provided that the governmental entity and its

employee shall be subject to liability only for the pro rata share of the total damages awarded in favor of a claimant which is attributable to the act or omission of the employee; (ii) provided further, that to the extent there is valid and collectible, applicable insurance or any other right to defense or indemnification legally available to and for the protection of an employee, while operating or using an automobile, aircraft or other vehicle not owned or leased by the governmental entity and while acting within the course and scope of his/her employment or duties, the governmental entity's duty hereunder to indemnify the employee and/or defend any such claim or lawsuit arising out of the operation or use of such personal automobile, aircraft or vehicle, shall be secondary to the obligation of the insurer or indemnitor of such automobile, aircraft or vehicle, whose obligation shall be primary; and (iii) provided further, this subsection shall not be construed to alter or relieve any such indemnitor or insurer of any legal obligation to such employee or to any governmental entity vicariously liable on account of or legally responsible for damages due to the allegedly wrongful error, omissions, conduct, act or deed of such employee.

(3) The defense of its employee by the governmental entity shall be undertaken whether the claim and civil lawsuit is brought in Idaho district court under Idaho law or is brought in a United States court under federal law. The governmental entity may refuse a defense or disavow and refuse to pay any judgment for its employee if it is determined that the act or omission of the employee was not within the course and scope of his employment or included malice or criminal intent.

(4) A governmental entity shall not be entitled to contribution or indemnification or reimbursement for legal fees and expenses from its employee unless a court shall find that the act or omission of the employee was outside the course and scope of his employment or included malice or criminal intent. Any action by a governmental entity against its employee and any action by an employee against the governmental entity for contribution, indemnification or necessary legal fees and expenses shall be tried to the court in the same civil lawsuit brought on the claim against the governmental entity or its employee.

(5) For the purposes of this act and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment and without malice or criminal intent.

(6) Nothing in this act shall enlarge or otherwise adversely affect the liability of an employee or a governmental entity. Any immunity or other bar to a civil lawsuit under Idaho or federal law shall remain in effect. The fact that a governmental entity may relieve an employee from all necessary legal fees and expenses and any judgment arising from the civil lawsuit shall not under any circumstances be communicated to the trier of fact in the civil lawsuit.

(7) When a claim asserted against an employee in the employee's individual capacity is dismissed by the court, the dismissed party shall have the right to a hearing pursuant to the provisions of section 12-123, Idaho Code.

History.

I.C., § 6-903, as added by 1976, ch. 309, § 4, p. 1062; am. 1978, ch. 272, § 2, p. 630; am. 1980, ch. 218, § 1, p. 490; am. 1984, ch. 140, § 1, p. 328; am. 2005, ch. 260, § 2, p. 803; am. 2011, ch. 197, § 1, p. 578.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 197, redesignated the subsections numerically and added the last sentence in subsection (1).

Compiler's Notes.

The term "this act" in subsections (1), (5), and (6) refers to S.L. 1971, ch. 150, which is compiled as §§ 6-901, 6-902, 6-904, 6-905, 6-906, 6-907 to 6-918, 6-919 to 6-925, 6-927, and 6-928. Probably, the reference should be to "this chapter," being chapter 9, title 6, Idaho Code.

JUDICIAL DECISIONS

Analysis

Action against city.
Malice.
State employees sued as individuals.

Action Against City.

Under subsection (1), there was sufficient evidence in the record to support a finding that a municipal pool patron was an invitee, and that the city owed her a duty to keep the premises in a reasonably safe condition. Ball v. City of Blackfoot, 152 Idaho 673, 273 P.3d 1266 (2012).

Malice.

Trial court erred in refusing to dismiss plaintiff's tort claims against a police officer where plaintiff failed to satisfy the burden, under subsection (e), of showing that the officer, who was acting during the course and scope of employment when ordering an involuntary catheterization after plaintiff was arrested for DUI, acted maliciously or with criminal intent. Miller v. Idaho State Patrol, 150 Idaho 856, 252 P.3d 1274 (2011).

State Employees Sued as Individuals.

In an action arising from the allegedly wrongful termination of a deputy fire chief, city employees were entitled to dismissal of the fire chief's claims against them in their personal capacities; the fire chief did not rebut the presumption that the employees acted within the course and scope of their employment, rather than in their personal capacities. Brown v. City of Caldwell, 769 F. Supp. 2d 1256 (D. Idaho 2011).

RESEARCH REFERENCES

A.L.R. — Comment note: Governmental liability for failure to reduce vegetation obscuring view at railroad crossing or at street or highway intersection. 50 A.L.R.6th 95.

Municipal liability for damage resulting from obstruction or clogging of drain or sewer. 54 A.L.R.6th 201.

6-904. Exceptions to governmental liability.

JUDICIAL DECISIONS

Analysis

Design immunity.
In general.
Intentional tort exception.
Malice.
Negligent performance of required function.

Design Immunity.

Where the homeowner alleged that her home was flooded as the result of a road reconstruction project performed by the city, her claims against the city for nuisance and inverse condemnation were properly dismissed upon summary judgment; the city enjoyed plan or design immunity under sub-

section (7) of this section. Brown v. City of Pocatello, 148 Idaho 802, 229 P.3d 1164 (2010).

The approval required under paragraph 7 to trigger the protection of this section's design exception provision is more than blanket approval to proceed with a project. Rather, it plainly requires meaningful review of the actual plan or design. Further, the plan or design must be sufficiently detailed that, by using it, one could accomplish the intended construction or improvement. Grabicki ex rel. Thompson v. City of Lewiston, 154 Idaho 686, 302 P.3d 26 (2013).

A city is not entitled to summary judgment on the ground of immunity under the design exception in this section, where genuine issues of material fact exist regarding whether the city's plan conformed to the proper engineering standards. Grabicki ex rel. Thompson v. City of Lewiston, 154 Idaho 686, 302 P.3d 26 (2013).

In General.

Although immunity under paragraph 7 is broad and long lasting, it does not absolutely bar negligence claims related to the plan or design of a state highway, where the plaintiff can point to a specific failure to warn or to a specific statute or a mandatory provision of the Manual on Uniform Traffic Control Devices that has been violated. Woodworth v. State, 154 Idaho 362, 298 P.3d 1066 (2013).

Intentional Tort Exception.

The owner of a trailer park sued the city for interference with contract and defamation after the city terminated electrical service to the trailer park due to the owner's failure to make required upgrades to the electrical system. Dismissal of the owner's claims was proper because the city was exempt from liability for intentional torts. Hoffer v. City of Boise, 151 Idaho 400, 257 P.3d 1226 (2011).

Malice.

Trial court erred in refusing to dismiss plaintiff's tort claims against a police officer because plaintiff failed to satisfy the burden, under subsection (3), of showing that the officer, who was acting during the course and scope of employment when ordering an involuntary catheterization after plaintiff was arrested for DUI, acted maliciously or with criminal intent. Miller v. Idaho State Patrol, 150 Idaho 856, 252 P.3d 1274 (2011).

Subsection (3) does not provide immunity to a governmental entity when that entity's employee acts with malice and/or criminal intent. Pauls v. Green, 2011 U.S. Dist. LEXIS 131170 (D. Idaho Nov. 14, 2011).

Negligent Performance of Required Function.

Arrestee's negligent infliction of emotional distress claim was not barred by the intentional tort exception to the Idaho Tort Claims Act where the complaint, when viewed in context, alleged that the county not only engaged in deliberately indifferent supervision, but was negligent in allowing an attack upon her while in jail. Pauls v. Green, 2011 U.S. Dist. LEXIS 131170 (D. Idaho Nov. 14, 2011).

6-904A. Exceptions to governmental liability.

JUDICIAL DECISIONS

Unpredictable Acts of Third Persons.

School district could only be held liable for an injury caused by a person under its supervision if its employee acted with malice or criminal intent or if the employee's conduct was reckless, willful, and wanton. The evidence did not create a genuine issue of material fact as to whether the conduct of any school employee was reckless, willful, and wanton, because there was no evidence that the student who hit plaintiffs' son had ever harmed another student. Mareci v. Coeur d'Alene Sch. Dist. No. 271, 150 Idaho 740, 250 P.3d 791 (2011).

6-905. Filing claims against state or employee — Time.

JUDICIAL DECISIONS

Claim Barred.

Business owner's notice of tort claim to the state department of agriculture was untimely because he had knowledge of facts by October 17, 2007, that would put a reasonably prudent person on notice that a possession permit for tigers would not be granted without satisfaction of the conditions stated in the October 17, 2007, letter, including that the tigers be spayed and neutered; since he did not file the notice of tort claim until May 14, 2008, his notice was clearly not timely. Renzo v. Idaho State Dep't of Agric., 149 Idaho 777, 241 P.3d 950 (2010).

6-906. Filing claims against political subdivision or employee — Time.

JUDICIAL DECISIONS

ANALYSIS

Applicability.
In general.
Notice.
—In general.

Applicability.

City was not entitled to dismissal of a former deputy fire chief's claim alleging wrongful discharge in violation of the Idaho Whistleblower Act, where the claim was filed within the statute of limitations under § 6-2105(2). The notice requirements under this section and § 50-219 do not apply to state law claims for damages under the Idaho Whistleblower Act. Brown v. City of Caldwell, 769 F. Supp. 2d 1256 (D. Idaho 2011).

Knowledge of facts which would put a reasonably prudent person on inquiry is the equivalent to knowledge of a wrongful act and will start the running of the 180 days period of this section. The statutory period begins to run from the occurrence of the wrongful act, even if the full extent of damages is not known at that time. Alpine Vill. Co. v. City of McCall, 154 Idaho 930, 303 P.3d 617 (2013).

In General.

In an action for additional fees, the time limit in this section began to run, not when the construction performance manager performed his additional services, but when the city denied the manager's fee request for those services. City of Meridian v. Petra Inc., 154 Idaho 425, 299 P.3d 232 (2013).

Notice.

—In General.

Fire chief's claim for breach of contract was dismissed because that claim was subject to the notice requirement under § 50-219; neither the fire chief's demand letters providing written notice of his whistleblower claim nor his initial complaint met the notice requirements of this section and § 50-219. Brown v. City of Caldwell, 769 F. Supp. 2d 1256 (D. Idaho 2011).

Cited in: Heilner v. Brown, 2 Idaho 263, 12 P. 903 (1887).

RESEARCH REFERENCES

Idaho Law Review. — Choice of Law in Idaho: A Survey and Critique of Idaho Cases, Andrew S. Jorgensen. 49 Idaho L. Rev. 547 (2013).

6-907. Contents of claims — Filing by agent or attorney — Effect of inaccuracies.

JUDICIAL DECISIONS

Cited in: Brown v. City of Caldwell, 769 F. Supp. 2d 1256 (D. Idaho 2011).

6-908. Restriction on allowance of claims.

JUDICIAL DECISIONS

ANALYSIS

In general.
Noncompliance.

In General.

Knowledge of facts which would put a reasonably prudent person on inquiry is the equivalent to knowledge of a wrongful act and will start the running of the 180 days period of § 6-906. The statutory period begins to run

from the occurrence of the wrongful act, even if the full extent of damages is not known at that time. Alpine Vill. Co. v. City of McCall, 154 Idaho 930, 303 P.3d 617 (2013).

Noncompliance.

Bail bond company's claim under Idaho Const., Art. VIII, § 4, challenging a sheriff's acceptance of bail bond payments by credit card, which equated to a cause of action for tortious interference with a business relationship, sounded in tort and, therefore, was properly dismissed for lack of timely notice of the claim. Allied Bail Bonds, Inc. v. County of Kootenai, 151 Idaho 405, 258 P.3d 340 (2011).

6-911. Limitation of actions.

JUDICIAL DECISIONS

In General.

Where plaintiff and state stipulated to a dismissal of an action originally filed in a federal court, the provisions of 28 U.S.C.S. § 1367(d) did not toll the statute of limitations. Thus, an action subsequently filed in state court, two years and nine months after the date of the alleged damages, is violative of this section. Noak v. Idaho Dep't of Corr., 152 Idaho 305, 271 P.3d 703 (2012).

6-916. Service of summons.

JUDICIAL DECISIONS

Cited in: Naranjo v. Idaho Dep't of Corr., 151 Idaho 916, 265 P.3d 529 (Ct. App. 2011).

6-918A. Attorneys' fees.

JUDICIAL DECISIONS

Cited in: Renzo v. Idaho State Dep't of Agric., 149 Idaho 777, 241 P.3d 950 (2010).

6-926. Judgment or claims in excess of comprehensive liability plan — Reduction by court — Limits of liability. — (1) The combined, aggregate liability of a governmental entity and its employees for damages, costs and attorney's fees under this chapter, on account of bodily or personal injury, death or property damage, or other loss as the result of any one (1) occurrence or accident regardless of the number of persons injured or the number of claimants, shall not exceed and is limited to five hundred thousand dollars ($500,000), unless the governmental entity has purchased applicable, valid, collectible liability insurance coverage in excess of said limit, in which event the controlling limit shall be the remaining available proceeds of such insurance. For claims arising from construction, operation or maintenance of impoundments, canals, laterals, drains or associated facilities that are under the supervision or control of the operating agency of irrigation districts whose board consists of directors of its member districts, the combined aggregate limit of liability for the operating agency, its member irrigation districts and their respective employees shall be the combined aggregate limit of a single governmental entity under this section. If any judgment or judgments, including costs and attorney's fees that may be awarded, are returned or entered, and in the aggregate total more than five hundred thousand dollars ($500,000), or the limits provided by said valid, collectible liability insurance, if any, whether in one (1) or more cases,

the court shall reduce the amount of the award or awards, verdict or verdicts, or judgment or judgments in any case or cases within its jurisdiction so as to reduce said aggregate loss to said applicable statutory limit or to the limit or limits provided by said valid, collectible insurance, if any, whichever is greater.

(2) Limits of liability specified in this section shall not be increased or altered by the fact that a decedent, on account of whose death a wrongful death claim is asserted hereunder, left surviving him or her more than one (1) person entitled to make claim therefor, nor shall the aggregate recovery exceed the single limit provided for injury or death to any one (1) person in those cases in which there is both an injury claim and a death claim arising out of the injury to one (1) person, the intent of this section being to limit such liabilities and recoveries in the aggregate to one (1) limit only.

(3) The entire exposure of the entity and its employee or employees hereunder shall not be enlarged by the number of liable employees or the theory of concurrent or consecutive torts or tort feasors or of a sequence of accidents or incidents if the injury or injuries or their consequences stem from one (1) occurrence or accident.

(4) In no case shall any court enter judgment, or allow any judgment to stand, which results in the limit of liability provided in this section to be exceeded in any manner or respect. If any court has jurisdiction of two (2) or more such claims in litigation in which the adjudication is simultaneous and, in the aggregate, exceeds the limits provided in this section, the reduction shall be pro rata in a proportion consistent with the relative amounts of loss of the claimants before the court; otherwise, the reduction shall be determined and made in view of limits remaining after the prior settlement of any other such claims or the prior satisfaction of any other such judgments, and no consideration shall be given to other such outstanding claims, if any, which have not been settled or satisfied prior thereto.

(5) The court shall reduce any judgment in excess of the limits provided by this act in any matter within its jurisdiction, whether by reason of the adjudication in said proceedings alone or of the total or aggregate of all such awards, judgments, settlements, voluntary payments or other such loss relevant to the limits provided in this section.

History.
I.C., § 6-926, as added by 1984, ch. 96, § 3, p. 221; am. 2011, ch. 197, § 2, p. 578.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 197, added the subsection designations and added the present second sentence in subsection (2).

CHAPTER 10
MEDICAL MALPRACTICE

SECTION.

6-1006. Stay of other court proceedings in interest of hearing before panel.

JUDICIAL DECISIONS

Filing.

This section only provides for a stay of court proceedings while the matter is pending before the prelitigation screening panel and for thirty days thereafter: it does not prevent a party from accomplishing service of process during that period. Taylor v. Chamberlain, 154 Idaho 695, 302 P.3d 35 (2013).

6-1012. Proof of community standard of health care practice in malpractice case.

JUDICIAL DECISIONS

ANALYSIS

Expert witness.
Knowledge of community standard.
"Provision of health care".
Standard of care.

Expert Witness.

In a medical malpractice action, an expert witness must show that he or she is familiar with the local standard of care for the relevant timeframe and specialty and must also state how he or she became familiar with that standard of care. Suhadolnik v. Pressman, 151 Idaho 110, 254 P.3d 11 (2011).

Award of exceptional expert witness fees was not proper where the only reason given by the court to justify exceptional fees was that the case required experts on the vasuclar system to travel and testify. Such specialized knowledge and expert testimony of the witnesses was of a type required in every malpractice case. Nightengale v. Timmel, 151 Idaho 347, 256 P.3d 755 (2011).

Summary judgment was properly awarded to a chiropractor in a patient's medical malpractice action because the patient's expert, who was from California, could not testify that the expert knew the local standard of care in Idaho; throughout the expert's deposition, the expert repeatedly illustrated a lack of knowledge regarding the applicable standard of care. Arregui v. Gallegos-Main, 153 Idaho 801, 291 P.3d 1000 (2012).

Patient's expert's affidavit lacked proper foundation and failed to satisfy the requirements of § 6-1013 and this section, because the affidavit failed to demonstrate the witness' familiarity with the community standard of care at the time of the incident about which he was to testify. Hall v. Rocky Mt. Emergency Physicians, LLC, — Idaho —, 312 P.3d 313 (2013).

Knowledge of Community Standard.

While it may be acceptable for an expert to demonstrate knowledge of a local standard of care by reviewing deposition testimony, that testimony must clearly articulate the local standard for the particular time, place and specialty at issue in order to meet the foundational requirements of § 6-1013. Suhadolnik v. Pressman, 151 Idaho 110, 254 P.3d 11 (2011).

"Provision of Health Care".

Language of the statute treats the provision of health care as a single act and not a series of steps, each of which must be analyzed to determine if it involved professional judgment. Hoover v. Hunter, 150 Idaho 658, 249 P.3d 851 (2011).

Standard of Care.

Summary judgment was properly awarded to physicians in a medical malpractice action because plaintiffs failed to comply with the requirements of this section; even assuming

the deceased patient's husband, a retired EMT, was competent to testify to the standard of care of a gastroenterologist in an emergency situation, he had not adequately alleged familiarity with the local standard of care and did not provide a basis for concluding that the standard of emergency care would have been a single national standard that did not vary from procedure to procedure. Hoover v. Hunter, 150 Idaho 658, 249 P.3d 851 (2011).

6-1013. Testimony of expert witness on community standard.

JUDICIAL DECISIONS

ANALYSIS

Foundation.
Standard of care.

Foundation.

In a medical malpractice action, an expert witness must show that he or she is familiar with the local standard of care for the relevant timeframe and specialty and must also state how he or she became familiar with that standard of care. Suhadolnik v. Pressman, 151 Idaho 110, 254 P.3d 11 (2011).

Where an expert demonstrates that a local standard of care has been replaced by a statewide or national standard of care, and further demonstrates that he or she is familiar with the statewide or national standard, the foundational requirements of this section have been met. Suhadolnik v. Pressman, 151 Idaho 110, 254 P.3d 11 (2011).

While it may be acceptable for an expert to demonstrate knowledge of a local standard of care by reviewing deposition testimony, that testimony must clearly articulate the local standard for the particular time, place and specialty at issue in order to meet the foundational requirements of this section. Suhadolnik v. Pressman, 151 Idaho 110, 254 P.3d 11 (2011).

Standard of Care.

Summary judgment was properly awarded to physicians in a medical malpractice action because plaintiffs failed to comply with the requirements of this section; even assuming the deceased patient's husband, a retired EMT, was competent to testify to the standard of care of a gastroenterologist in an emergency situation, he had not adequately alleged familiarity with the local standard of care and did not provide a basis for concluding that the standard of emergency care would have been a single national standard that did not vary from procedure to procedure. Hoover v. Hunter, 150 Idaho 658, 249 P.3d 851 (2011).

Summary judgment was properly awarded to a chiropractor in a patient's medical malpractice action because the patient's expert, who was from California, could not testify that the expert knew the local standard of care in Idaho; throughout the expert's deposition, the expert repeatedly illustrated a lack of knowledge regarding the applicable standard of care. Arregui v. Gallegos-Main, 153 Idaho 801, 291 P.3d 1000 (2012).

Patient's expert's affidavit lacked proper foundation and failed to satisfy the requirements of § 6-1012 and this section, because the affidavit failed to demonstrate the witness' familiarity with the community standard of care at the time of the incident about which he was to testify. Hall v. Rocky Mt. Emergency Physicians, LLC, — Idaho —, 312 P.3d 313 (2013).

RESEARCH REFERENCES

A.L.R. — Medical negligence in extraction of tooth, established through expert testimony. 18 A.L.R.6th 325.

6-1014. Patient protection and affordable care act and other metrics not used to establish community standard. — (1) In determining whether a health care practitioner has met a standard of care under this chapter or under any other Idaho statute, no criteria, guideline, standard or other metric established or imposed by the patient protection and affordable care act (PPACA), P.L. 111-148, established or imposed by or pursuant to any other law or regulation of the United States or any entity or agency thereof and used for the purpose of determining reimbursement or

a rate of reimbursement for the care provided, or established or imposed by another state or by a third party payor, shall be used as a basis for establishing an applicable community standard of care. The fact that a health care practitioner has met or failed to meet any such criteria, guideline, standard or other metric shall not be admissible or considered by a finder of fact in any proceeding or other action concerning a determination of liability of a health care practitioner to a patient or other party seeking damages on account of an injury to a patient or in any proceeding or other action of a state licensing or regulatory authority imposing professional discipline for failure of a health care practitioner to meet the applicable standard of care.

(2) Notwithstanding the provisions of subsection (1) of this section, nothing in this section shall prevent the consideration of facts that establish compliance or lack of compliance with a community standard of care, so long as the facts considered do not include reference to any criteria, guideline, standard or other metric imposed by the PPACA, established or imposed by or pursuant to any other law or regulation of the United States or any entity or agency thereof and used for the purpose of determining reimbursement or a rate of reimbursement for the care provided, or established or imposed by another state or by a third party payor.

(3) For the purposes of this section, the following definitions shall apply:

(a) "Health care practitioner" means a person licensed, registered or otherwise authorized under title 54, Idaho Code, to provide services relating to the prevention, cure or treatment of illness, injury or disease.

(b) "Third party payor" means any entity subject to the jurisdiction of the department of insurance under title 41, Idaho Code, and also includes any federal, state or local government entity and its contractors making payments or administering any plan or program paying for health care services.

History.
I.C., § 6-1014, as added by 2014, ch. 346, § 1, p. 867.

STATUTORY NOTES

Compiler's Notes.
The abbreviation enclosed in parentheses so appeared in the law as enacted.

CHAPTER 11

RESPONSIBILITIES AND LIABILITIES OF SKIERS AND SKI AREA OPERATORS

6-1102. Definitions. — The following words and phrases when used in

this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section.

(1) "Aerial passenger tramway" means any device operated by a ski area operator used to transport passengers, by single or double reversible tramway; chair lift or gondola lift; T-bar lift, J-bar lift, platter lift or similar device; a fiber rope or wire rope tow or a conveyor, which is subject to regulations adopted by the proper authority.

(2) "Passenger" means any person who is lawfully using an aerial passenger tramway, or is waiting to embark or has recently disembarked from an aerial passenger tramway and is in its immediate vicinity.

(3) "Ski area" means the property owned or leased and under the control of the ski area operator within the state of Idaho.

(4) "Ski area operator" means any person, partnership, corporation or other commercial entity and their agents, officers, employees or representatives, who has operational responsibility for any ski area or aerial passenger tramway.

(5) "Skiing area" means all designated slopes and trails but excludes any aerial passenger tramway.

(6) "Skier" means any person present at a skiing area under the control of a ski area operator for the purpose of engaging in activities including, but not limited to, sliding downhill or jumping on snow or ice on skis, a snowboard, or any other sliding device, or who is using any ski area including, but not limited to, ski slopes, trails and freestyle terrain but does not include the use of an aerial passenger tramway.

(7) "Ski slopes and trails" mean those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing.

(8) "Freestyle terrain" means terrain parks and terrain features including, but not limited to, jumps, hits, ramps, banks, fun boxes, jibs, rails, half-pipes, quarter pipes and any other natural or constructed features.

History.
I.C., § 6-1102, as added by 1979, ch. 270, § 1, p. 701; am. 2014, ch. 187, § 1, p. 497.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 187, substituted "a fiber rope or wire rope tow or a conveyor" for "or a fiber rope tow" in subsection (1); rewrote subsection (6), which formerly read: "'Skier' means any person present at a skiing area under the control of a ski area operator for the purpose of engaging in the sport of skiing by utilizing the ski slopes and trails and does not include the use of an aerial passenger tramway"; and added subsection (8).

6-1103. Duties of ski area operators with respect to ski areas. — Every ski area operator shall have the following duties with respect to their operation of a skiing area:

(1) To mark all trail maintenance vehicles and to furnish such vehicles with flashing or rotating lights that shall be in operation whenever the vehicles are working or are in movement in the skiing area;

(2) To mark with a visible sign or other warning implement the location

of any hydrant or similar equipment used in snowmaking operations and located on ski slopes and trails;

(3) To mark conspicuously the top or entrance to each slope or trail or area, with an appropriate symbol for its relative degree of difficulty; and those slopes, trails, or areas which are closed, shall be so marked at the top or entrance;

(4) To maintain one (1) or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes with each trail and slope rated thereon as to its relative degree of difficulty;

(5) To designate by trail board or otherwise which trails or slopes are open or closed;

(6) To place, or cause to be placed, whenever snowgrooming or snowmaking operations are being undertaken upon any trail or slope while such trail or slope is open to the public, a conspicuous notice to that effect at or near the top of such trail or slope;

(7) To post notice of the requirements of this chapter concerning the use of ski retention devices. This obligation shall be the sole requirement imposed upon the ski area operator regarding the requirement for or use of ski retention devices;

(8) To provide a ski patrol with qualifications meeting the standards of the national ski patrol system;

(9) To post a sign at the bottom of all aerial passenger tramways which advises the passengers to seek advice if not familiar with riding the aerial passenger tramway; and

(10) Not to intentionally or negligently cause injury to any person; provided, that except for the duties of the operator set forth in subsections (1) through (9) of this section and in section 6-1104, Idaho Code, the operator shall have no duty to eliminate, alter, control or lessen the risks inherent in the sport of skiing, which risks include, but are not limited to, those described in section 6-1106, Idaho Code; and, that no activities undertaken by the operator in an attempt to eliminate, alter, control or lessen such risks shall be deemed to impose on the operator any duty to accomplish such activities to any standard of care.

History.
I.C., § 6-1103, as added by 1979, ch. 270, § 1, p. 701; am. 2014, ch. 187, § 2, p. 497.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 187, substituted "its relative degree" for "it relative degree" near the end of subsection (4).

6-1106. Duties of skiers. — It is recognized that skiing as a recreational sport is hazardous to skiers, regardless of all feasible safety measures that can be taken.

Each skier expressly assumes the risk of and legal responsibility for any injury to person or property that results from participation in the sport of skiing including any injury caused by the following, all whether above or below snow surface: variations in terrain; any movement of snow including,

but not limited to, slides, sloughs or avalanches; any depths of snow, including tree wells, or any accumulations of snow, whether natural or man made, including snowmaking mounds; freestyle terrain; surface or subsurface snow or ice conditions; bare spots, rocks, trees, other forms of forest growth or debris, lift towers and components thereof; utility poles, and snowmaking and snowgrooming equipment which is plainly visible or plainly marked in accordance with the provisions of section 6-1103, Idaho Code. Therefore, each skier shall have the sole individual responsibility for knowing the range of his own ability to negotiate any slope or trail, and it shall be the duty of each skier to ski within the limits of the skier's own ability, to maintain reasonable control of speed and course at all times while skiing, to heed all posted warnings, to ski only on a skiing area designated by the ski area operator and to refrain from acting in a manner which may cause or contribute to the injury of anyone. The responsibility for collisions by any skier while actually skiing, with any person, shall be solely that of the individual or individuals involved in such collision and not that of the ski area operator.

No person shall place any object in the skiing area or on the uphill track of any aerial passenger tramway that may cause a passenger or skier to fall; cross the track of any T-bar lift, J-bar lift, platter lift or similar device, a fiber rope or wire rope tow and a conveyor, except at a designated location; or depart when involved in a skiing accident, from the scene of the accident without leaving personal identification, including name and address, before notifying the proper authorities or obtaining assistance when that person knows that any other person involved in the accident is in need of medical or other assistance.

No skier shall fail to wear retention straps or other devices to help prevent runaway equipment.

History.

I.C., § 6-1106, as added by 1979, ch. 270, § 1, p. 701; am. 2014, ch. 187, § 3, p. 497.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 187, inserted "any movement of snow including, but not limited to, slides, sloughs or avalanches; any depths of snow, including tree wells, or any accumulations of snow, whether natural or man made, including snowmaking mounds; freestyle terrain" in the first sentence of the second paragraph; substituted "a fiber rope or wire rope tow or a conveyor" for "or a fiber rope tow" in the third paragraph; and substituted "equipment" for "skis" in the last paragraph.

CHAPTER 14

PRODUCT LIABILITY

6-1401. Scope.

JUDICIAL DECISIONS

Strict Liability.

Idaho does not recognize a breach of warranty claim in personal injury products liability actions which do not involve a contractual relationship between the manufacturer and the injured person. When a plaintiff brings a non-privity breach of warranty action against a manufacturer or seller to recover for personal injuries allegedly sustained as a result of a defective product, that action is one for strict liability in tort, governed by the provisions of § 6-1401 et seq. Elliott v. Smith & Nephew, 2013 U.S. Dist. LEXIS 59072 (D. Idaho Apr. 15, 2013).

RESEARCH REFERENCES

A.L.R. — Products liability: Exercise, fitness, and related equipment. 76 A.L.R.6th 395.

Products liability: Sudden or unexpected acceleration of motor vehicle. 76 A.L.R.6th 465.

6-1402. Definitions.

JUDICIAL DECISIONS

"Manufacturer."

The determination of whether a company was subject to strict liability as a product seller who remanufactured a product before it was sold to the user or consumer was dependent upon disputed facts, including whether company held itself out as a manufacturer and/or a product seller, whether company remanufactured or serviced other parts of the machine, the extent of the remanufacturing or servicing done to the engine, how the engine ultimately arrived in the hands of the final user, and the extent to which the company altered the engine before it was sold. Britton v. Dallas Airmotive, Inc., 2010 U.S. Dist. LEXIS 19502 (D. Idaho 2010).

CHAPTER 16

PERIODIC PAYMENT OF JUDGMENTS — LIMITATION ON CERTAIN TORT DAMAGES AND LIABILITIES

SECTION.

6-1608. Limitation on evidence of failure to wear a safety restraint.

6-1601. Definitions.

JUDICIAL DECISIONS

Punitive Damages.

The purpose of punitive damages is not to compensate the plaintiff, but to express the outrage of society at certain actions of the defendant. United Heritage Prop. & Cas. Co. v. Farmers Alliance Mut. Ins. Co., 2012 U.S. Dist. LEXIS 17592 (D. Idaho Feb. 9, 2012).

Cited in: Burks v. Bailey (In re Bailey), 499 B.R. 873 (Bankr. D. Idaho 2013).

6-1603. Limitation on noneconomic damages.

JUDICIAL DECISIONS

ANALYSIS

Application.
In general.
Willful or reckless misconduct.

Application.

In a tort action filed by plaintiff tenant who fell down the stairs of the leased premises, sufficient evidence showed defendant landlord engaged in willful and wanton misconduct and, therefore, this section's limit on noneconomic damages did not apply. The landlord knew that the steps had deteriorated to the point that they constituted a hazard, improperly repaired the treads by using brackets of the wrong size, and was warned by another tenant that the stairs treads were loose. Phillips v. Erhart, 151 Idaho 100, 254 P.3d 1 (2011).

In General.

From a plain reading of this section, the noneconomic damages cap applies to each individual bringing a cause of action, not on a per-claim basis. Aguilar v. Coonrod, 151 Idaho 642, 262 P.3d 671 (2011).

Willful or Reckless Misconduct.

This section does not require the jury to find that the defendant subjectively knew of a high probability of harm. Phillips v. Erhart, 151 Idaho 100, 254 P.3d 1 (2011).

Trial court did not err in a negligence action in permitting a jury to consider whether a tire company's conduct was reckless; the allegations placed the company on notice that its conduct might have involved a heightened degree of negligence and that it, therefore, faced potential liability in excess of the cap on noneconomic damages in subsection (1). Carrillo v. Boise Tire Co., 152 Idaho 741, 274 P.3d 1256 (2012).

6-1604. Limitation on punitive damages.

JUDICIAL DECISIONS

ANALYSIS

Amended complaint.
Amendment of claim.
Assignability.
Basis for award.
Contract actions.
Procedure.

Amended Complaint.

In an insurance action, plaintiff's motion to amend the complaint to include a claim for punitive damages pursuant to subsection (2) was granted, because defendant insurance company knew that the insured was a covered insured at the commencement of the claims litigation and prevented the insured from learning that information. The totality of the evidence presented by the plaintiff in its motion to amend would support a jury verdict for punitive damages. United Heritage Prop. & Cas. Co. v. Farmers Alliance Mut. Ins. Co., 2012 U.S. Dist. LEXIS 17592 (D. Idaho Feb. 9, 2012).

Amendment of Claim.

Although the landowner was entitled to amend his complaint, he was not granted leave to add a prayer for punitive damages; accordingly, the district court properly refused to award them. Bach v. Bagley, 148 Idaho 784, 229 P.3d 1146 (2010).

Assignability.

Punitive damages are not necessarily personal to the plaintiff and, therefore, may be assigned, e.g., to an insurance company, along with the assignable underlying cause of action. United Heritage Prop. & Cas. Co. v. Farmers Alliance Mut. Ins. Co., 2012 U.S. Dist. LEXIS 17592 (D. Idaho Feb. 9, 2012).

Basis for Award.

Punitive damages may not be awarded based on simple negligence, but instead depend on whether the plaintiff is able to establish the requisite intersection of two factors: a bad act and a bad state of mind. United Heritage Prop. & Cas. Co. v. Farmers Alliance Mut. Ins. Co., 2012 U.S. Dist. LEXIS 17592 (D. Idaho Feb. 9, 2012).

To justify punitive damages, a defendant must have: (1) acted in a manner that was an extreme deviation from reasonable standards of conduct, with an understanding of or disregard for its likely consequences, and (2) acted with an extremely harmful state of mind, whether that be termed malice, oppression, fraud or gross negligence; malice, oppression, wantonness; or simply deliberate or willful. Burks v. Bailey (In re Bailey), 499 B.R. 873 (Bankr. D. Idaho 2013).

Contract Actions.

Punitive damages are allowed in contract actions; however, they are generally disfavored and should be awarded in only the most unusual and compelling circumstances. Burks v. Bailey (In re Bailey), 499 B.R. 873 (Bankr. D. Idaho 2013).

Procedure.

Employee's punitive damages claim was dismissed where discovery had not been completed on her state law claims of discriminatory discharge and hostile work environment. Collier v. Turner Indus. Group, L.L.C., 797 F. Supp. 2d 1029 (D. Idaho 2011).

Trial court did not abuse its discretion in declining to permit a plaintiff to reopen its case to present evidence to support its punitive damages claim to the jury, where the decision was rendered on the basis that the plaintiff had rested its case in chief without presenting evidence to support an award of such damages. Printcraft Press, Inc. v. Sunnyside Park Utils., Inc., 153 Idaho 440, 283 P.3d 757 (2012).

Subsection (2) provides that no claim for damages shall be filed containing a prayer for relief seeking punitive damages. Instead, punitive damages may be sought in a lawsuit only after the claimant proves by clear and convincing evidence, oppressive, fraudulent, malicious or outrageous conduct by the party against whom the claim for punitive damages is asserted. After presenting such proof at a hearing, the party seeking punitive damages may then amend the complaint to add a claim for punitive damages. Elliott v. Smith & Nephew, 2013 U.S. Dist. LEXIS 59072 (D. Idaho Apr. 15, 2013).

Cited in: Kuhn v. Coldwell Banker Landmark, Inc., 150 Idaho 240, 245 P.3d 992 (2010); Kayser v. McClary, 2011 U.S. Dist. LEXIS 12306 (D. Idaho Feb. 7, 2011).

6-1606. Prohibiting double recoveries from collateral sources.

JUDICIAL DECISIONS

Social Security Benefits.

Trial court erred in denying a tire company's motion to reduce a father's damage award; the father's social security benefits were deductible collateral source payments. Carrillo v. Boise Tire Co., 152 Idaho 741, 274 P.3d 1256 (2012).

6-1607. Employer liability for employee torts.

JUDICIAL DECISIONS

Applicability.

Complaint under § 49-2417 against a vehicle owner, for allowing a dangerous vehicle to be driven on a public highway, contained no allegation that the claim was based on the employer-employee relationship between the driver and the vehicle owner, therefore, § 6-1607, covering tort claims based upon the employer-employee relationship, did not apply, although the driver was in fact employed by the vehicle owner. Nava v. Rivas-Del Toro, 151 Idaho 853, 264 P.3d 960 (2011).

6-1608. Limitation on evidence of failure to wear a safety restraint. — (1) In any action where the respondent seeks to introduce evidence of the failure of the claimant to wear a safety restraint as required by section 49-673, Idaho Code, the respondent shall prove, by clear and convincing evidence, that the claimant's failure to wear a safety restraint was a contributing cause of the particular injury or damage sustained by the claimant. Such evidence may not be used to determine comparative fault for purposes of section 6-801, Idaho Code, but only for apportionment of damages.

(2) In all civil actions in which the affirmative defense of failure to wear a safety restraint is permitted, no pleading shall be filed containing such affirmative defense. However, a party may, pursuant to a pretrial motion and after a hearing before the court, amend the pleadings to include an affirmative defense that the failure to wear a safety restraint was a contributing cause of the particular injury or damage sustained by the claimant. The court shall allow the motion to amend the pleadings if, after weighing the evidence presented, the court concludes that the moving party has established at such hearing a reasonable likelihood of proving facts at trial sufficient to support a finding of damages apportionment caused by the failure to wear a safety restraint. Such an affirmative defense added pursuant to this section shall not be barred by lapse of time under the applicable limitation on the time in which an action may be brought or claim asserted, if the time prescribed or limited had not expired when the original pleading was filed.

(3) Evidence of the failure to wear a safety restraint as required by section 49-673, Idaho Code, shall not be admissible in the context of a claim under a policy of uninsured motorist and underinsured motorist coverage for automobile insurance.

(4) Evidence of the failure to wear a safety restraint as required by section 49-673, Idaho Code, shall not be admissible in an action for recovery of damages for and on behalf of a minor who is not old enough to qualify for driver's training; however, evidence of the failure to wear a safety restraint as required by section 49-673, Idaho Code, may be offered in cases in accordance with subsections (1) and (2) of this section where the parent of the minor bringing an action for the wrongful death of the minor has failed to comply with section 49-673, Idaho Code.

History.
I.C., § 6-1608, as added by 2014, ch. 320, § 1, p. 794.

CHAPTER 18

EQUINE ACTIVITIES IMMUNITY ACT

6-1802. Limitation of liability on equine activities.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of statutory exemptions from liability for persons injured by equine or equestrian activities. 79 A.L.R.6th 487.

CHAPTER 21

PROTECTION OF PUBLIC EMPLOYEES

6-2101. Legislative intent.

RESEARCH REFERENCES

A.L.R. — What constitutes activity of private-sector employee protected under state whistleblower protection statute covering employee's "report," "disclosure," "notification," or the like of wrongdoing — Nature of activity reported. 36 A.L.R.6th 203.

What constitutes activity of public or state employee protected under state whistleblower protection statute covering employee's "report," "disclosure," "notification," or the like of wrongdoing — Nature of activity reported. 37 A.L.R.6th 137.

Construction and application of whistleblower provision of Sarbanes-Oxley act, 18 USC § 1514A(a)(1). 15 A.L.R. Fed. 2d 315.

6-2104. Reporting of governmental waste or violation of law — Employer action.

JUDICIAL DECISIONS

Protected Activities.

Where an employee resigned due to her perception that there was a hostile working environment, after she complained about an inappropriate romantic relationship between her supervisor and another employee, her constructive discharge claim was time barred. Even if she met the evidentiary burden of showing that the circumstances amounted to constructive discharge, she filed her claim more than 180 days after the discharge occurred. Patterson v. State Dep't of Health & Welfare, 151 Idaho 310, 256 P.3d 718 (2011).

RESEARCH REFERENCES

A.L.R. — What constitutes activity of employee protected under state whistleblower protection statute covering employee's "report," "disclosure," "notification," or the like of wrongdoing — Sufficiency of report. 10 A.L.R.6th 531.

What constitutes activity of employee, other than "reporting" wrongdoing, protected under state whistleblower protection statute. 13 A.L.R.6th 499.

What constitutes activity of private-sector employee protected under state whistleblower protection statute covering employee's "report," "disclosure," "notification," or the like of wrongdoing — Nature of activity reported. 36 A.L.R.6th 203.

What constitutes activity of public or state employee protected under state whistleblower protection statute covering employee's "report," "disclosure," "notification," or the like of wrongdoing — Nature of activity reported. 37 A.L.R.6th 137.

6-2105. Remedies for employee bringing action — Proof required.

JUDICIAL DECISIONS

Notice Requirement.

City was not entitled to dismissal of a former deputy fire chief's claim alleging wrongful discharge in violation of the Idaho Whistleblower Act, where the claim was filed within the statute of limitations; the notice requirements under §§ 6-906 and 50-219 do not apply to state law claims for damages under the Idaho Whistleblower Act. Brown v. City of Caldwell, 769 F. Supp. 2d 1256 (D. Idaho 2011).

Where an employee resigned due to her perception that there was a hostile working environment, after she complained about an inappropriate romantic relationship between her supervisor and another employee, her constructive discharge claim was time barred. Even if she met the evidentiary burden of showing that the circumstances amounted to constructive discharge, she filed her claim more than 180 days after the discharge occurred. Patterson v. State Dep't of Health &

Welfare, 151 Idaho 310, 256 P.3d 718 (2011).

CHAPTER 29

LIVESTOCK ACTIVITIES IMMUNITY ACT

SECTION.

6-2901. Definitions. — For purposes of this section, the following terms have the following meanings:

(1) "Livestock" means cattle, sheep, swine, goats, llamas, alpacas or poultry.

(2) "Livestock activity" means livestock shows, fairs, competitions, performances, races or parades.

(3) "Livestock activity sponsor" means an individual, group or club, partnership or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes or provides the facilities for a livestock activity including, but not limited to, 4-H clubs, school and college sponsored classes and programs and operators, instructors and promoters of livestock facilities including, but not limited to, fairs and arenas at which the activity is held.

(4) "Livestock professional" means a person engaged for compensation in:

(a) Instructing a participant or renting livestock to a participant; or

(b) Renting equipment to a participant.

(5) "Participant" means any person, whether amateur or professional, who directly engages in a livestock activity, whether or not a fee is paid to participate in the livestock activity.

History.
I.C., § 6-2801, as added by 2010, ch. 239, § 1, p. 620; am. 2011, ch. 151, § 5, p. 414.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 151, redesignated this section from § 6-2801.

Compiler's Notes.
Two 2010 acts, chapters 138 and 239, purported to create a new chapter 28 in title 6, Idaho Code. S.L. 2010, ch. 138 has been compiled as chapter 28, title 6, Idaho Code. S.L. 2010, ch. 239 was compiled as chapter 29, title 6, Idaho Code. The recompilation of the provisions enacted by S.L. 2010, ch. 239 was made permanent by S.L. 2011, ch. 151.

6-2902. Limitation of liability on livestock activities. — (1) Except as provided in subsections (2) and (3) of this section, a livestock activity sponsor or a livestock professional shall not be liable for any injury to or the death of a participant or livestock engaged in a livestock activity and, except as provided in subsections (2) and (3) of this section, no participant nor participant's representative may maintain an action against or recover from

a livestock activity sponsor or a livestock professional for an injury to or the death of a participant or livestock engaged in a livestock activity.

(2) The provisions of this chapter do not apply to the horse or mule racing industry as regulated in chapter 25, title 54, Idaho Code, or to equines regulated in chapter 18, title 6, Idaho Code.

(3) Nothing in subsection (1) of this section shall prevent or limit the liability of a livestock activity sponsor or a livestock professional:

(a) If the livestock activity sponsor or the livestock professional:

(i) Provided equipment and the equipment caused the injury;

(ii) Provided the livestock and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the livestock activity, determine the ability of the livestock to behave safely with the participant, and to determine the ability of the participant to safely manage the particular livestock;

(iii) Owns, leases, rents or otherwise is in lawful possession and control of the land or facilities upon which the participant or livestock sustained injuries because of a dangerous latent condition which was known to or should have been known to the livestock activity sponsor or the livestock professional and for which warning signs have not been conspicuously posted;

(iv) Commits an act or omission that is unreasonable or willfully disregards the safety of the participant or livestock and that act or omission caused the injury; or

(v) Intentionally injures the participant or livestock;

(b) Under liability provisions as set forth in the products liability laws; or

(c) Under the liability provisions set forth in chapter 9, title 6, Idaho Code.

History.

I.C., § 6-2802, as added by 2010, ch. 239, § 1, p. 620; am. 2011, ch. 151, § 6, p. 414.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 151, redesignated this section from § 6-2802.

Compiler's Notes.

Two 2010 acts, chapters 138 and 239, purported to create a new chapter 28 in title 6, Idaho Code. S.L. 2010, ch. 138 has been compiled as chapter 28, title 6, Idaho Code. S.L. 2010, ch. 239 was compiled as chapter 29, title 6, Idaho Code. The recompilation of the provisions enacted by S.L. 2010, ch. 239 was made permanent by S.L. 2011, ch. 151.

CHAPTER 30

IDAHO AGRITOURISM PROMOTION ACT

6-3001. Short title. — This act shall be known as the "Idaho Agritourism Promotion Act."

History.
I.C., § 6-3001, as added by 2013, ch. 177, § 1, p. 412.

STATUTORY NOTES

Compiler's Notes.
The term "this act" refers to S.L. 2013, ch. 177, which is compiled as §§ 6-3001 through 6-3006.

6-3002. Purpose. — The legislature finds that agriculture plays a substantial role in the economy, culture and history of Idaho. As an increasing number of Idahoans are removed from day-to-day agricultural experiences, agritourism provides a valuable opportunity for the general public to interact with, experience and understand agriculture. Inherent risks exist on farms and ranches, the elimination of which would diminish the agritourism experience. Uncertainty of potential liability associated with inherent risks has a negative impact on the establishment and success of agritourism operations.

History.
I.C., § 6-3002, as added by 2013, ch. 177, § 1, p. 412.

6-3003. Definitions. — As used in this chapter, the term:

(1) "Agritourism activity" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities including, but not limited to, farming, ranching, historic, cultural, on-site educational programs, recreational farming programs that may include on-site hospitality services, guided and self-guided tours, bed and breakfast accommodations, petting zoos, farm festivals, corn mazes, harvest-your-own operations, hayrides, barn parties, horseback riding, fee fishing and camping. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

(2) "Agritourism professional" means any person who is engaged in the business of providing one (1) or more agritourism activities, whether or not for compensation.

(3) "Inherent risks of agritourism activity" means those dangers or conditions that are an integral part of an agritourism activity including certain hazards, including surface and subsurface conditions, natural conditions of land, vegetation, waters, the behavior of wild or domestic animals and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

(4) "Participant" means any person, other than the agritourism professional, who engages in an agritourism activity.

(5) "Person" means an individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government or any other group acting as a unit.

History.
I.C., § 6-3003, as added by 2013, ch. 177, § 1, p. 412.

6-3004. Liability. — (1) Except as provided in subsection (2) of this section, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, so long as the warning contained in section 6-3005, Idaho Code, is posted as required and, except as provided in subsection (2) of this section, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage or death of the participant resulting from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activities, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

(2) Nothing in subsection (1) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one (1) or more of the following:

(a) Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage or death to the participant;

(b) Has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage or death to the participant.

(3) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

History.
I.C., § 6-3004, as added by 2013, ch. 177, § 1, p. 412.

6-3005. Warning required. — (1) Every agritourism professional must post and maintain signs that contain the warning notice specified in subsection (2) of this section. The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with each letter to be a minimum of one (1) inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or

off the location or at the site of the agritourism activity, must contain in clearly readable print the warning notice specified in subsection (2) of this section.

(2) The signs and contracts described in subsection (1) of this section must contain the following notice of warning:

WARNING

Under Idaho law, there are risks associated with agritourism, which could lead to injury or death. You are assuming these risks. Section 6-3004, Idaho Code.

(3) Failure to comply with the requirements concerning warning signs and notices provided in this section shall prevent an agritourism professional from invoking the privileges of immunity provided by the provisions of this chapter.

History.
I.C., § 6-3005, as added by 2013, ch. 177, § 1, p. 412.

6-3006. Taxation status. — The use of a farm or ranch to conduct an agritourism activity shall not affect the assessment of the property as land actively devoted to agriculture as provided in section 63-604, Idaho Code.

History.
I.C., § 6-3006, as added by 2013, ch. 177, § 1, p. 412.